SUPPORT OF ITS OPP. TO PLAINTIFF'S MSJ

Whittaker Corporation hereby provides its Statement of Genuine Disputes pursuant to the Central District Local Rules and Judge Blumenfeld's order:

| P | UNDISPUTED | SUPPORTI |
|----|------------|----------|
| lt | FACTS | NG |
| , | | EVIDENCE |
| S | | |
| S | | |
| S | | |
| U | | |
| F | | |
| N | | |
| 0. | | |

Perchlorate, TCE and PCE are "Hazardous Substances" Under CERCLA and the HSAA.

| 1. | Trichloroeth | Request | Not Disputed. |
|----|--------------------|------------------------------|--|
| | ylene | for | |
| | ("TCE") is | Judicial | Whittaker objects this is not a fact |
| | a hazardous waste. | Notice ("RJN") | but a "legal conclusion," in |
| | | Ex. B violation of Judge Blu | violation of Judge Blumenfeld's Standing Order regarding MSJs. |
| | | (Title 40, | Standing Order regarding Wishs. |
| | | section | |
| | | 302.4 of | |
| | | the | |
| | | United | |
| | | States | |

| | | | т. | |
|----|---------|------------------|------------|---|
| 1 | | | Code of | |
| 2 | | | Federal | |
| 3 | | | Regulatio | |
| 4 | | | ns | |
| 5 | | | (2011)) | |
| 6 | | | | |
| 7 | 2. | Tetrachloroet | RJN Ex. B | Not Disputed. |
| 8 | | hylene | (Title 40, | |
| 9 | | ("PCE") is a | section | Whittelran chiects this is not a fact but a |
| 10 | | hazardous | 302.4 of | Whittaker objects this is not a fact but a "local conclusion" |
| 11 | | waste. | the United | "legal conclusion." |
| 12 | | | States | |
| 13 | | | Code of | |
| 14 | | | Federal | |
| 15 | | | Regulation | |
| 16 | | | s (2011)) | |
| 17 | 3. | Perchlorate is a | RJN Ex. | Not disputed. |
| 18 |] 3. | hazardous | A | Not disputed. |
| 19 | | substance. | (Castaic | |
| 20 | | substance. | Lake | Whittaker objects this is not a fact |
| 21 | | | Water | but a "legal conclusion." |
| 22 | | | Agency v. | |
| 23 | | | Whittaker | |
| 24 | | | Corp., | |
| 25 | | | 272 | |
| 26 | | | F.Supp.2d | |
| 27 | | | 1053, | |
| 28 | 2930843 | | , | |

| 1 | | | 1059 (C.D. | |
|--|----|--|-------------------------------|---------------|
| 2 | | | Cal. 2003) | |
| 3 | | | ("Castaic | |
| 4 | | | Lake"); RJN | |
| 5 | | | Ex. D, at | |
| 6 | | | 212 (2008 | |
| 7 | | | U.S. Dept. | |
| 8 | | | of Health & | |
| 9 | | | Human | |
| 10 | | | Services | |
| 11 | | | Toxicologic | |
| 12 | | | al Profile for | |
| 13 | | | Perchlorates | |
| 14 | | |) | |
| | | | ' | |
| 15 | 4. | The California | RJN Ex. E | Not Disputed. |
| 15 16 | 4. | The California State Water | RJN Ex. E (DDW 1997 | Not Disputed. |
| 16 17 | 4. | | | Not Disputed. |
| 16 17 18 | 4. | State Water | (DDW 1997 97-005 | Not Disputed. |
| 16 17 18 19 | 4. | State Water Resources | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 | 4. | State Water Resources Control Board's | (DDW 1997 97-005 | Not Disputed. |
| 16 17 18 19 20 21 | 4. | State Water Resources Control Board's Division of | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 | 4. | State Water Resources Control Board's Division of Drinking Water | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 23 | 4. | State Water Resources Control Board's Division of Drinking Water ("DDW") | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 23 24 | 4. | State Water Resources Control Board's Division of Drinking Water ("DDW") adopted its 97- | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 23 24 25 | 4. | State Water Resources Control Board's Division of Drinking Water ("DDW") adopted its 97- 005 Policy | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 23 24 25 26 | 4. | State Water Resources Control Board's Division of Drinking Water ("DDW") adopted its 97- 005 Policy Guidance for | (DDW 1997 97-005 Policy | Not Disputed. |
| 16 17 18 19 20 21 22 23 24 25 | 4. | State Water Resources Control Board's Division of Drinking Water ("DDW") adopted its 97- 005 Policy Guidance for Direct Domestic | (DDW 1997 97-005 Policy | Not Disputed. |

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| 1 | | ("97- 005") on | | |
|----|----|----------------|-----------|---------------|
| 2 | | November 5, | | |
| 3 | | 1997. | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | 5. | DDW issued its | RJN Ex. | Not Disputed. |
| 10 | | revised 97-005 | F | |
| 11 | | on September | (DDW's | |
| 12 | | 21, 2020. | revised | |
| 13 | | | 97-005 | |
| 14 | | | Policy | |
| 15 | | | Guidance | |
| 16 | | |). | |
| 17 | 6. | DDW | Gee Decl. | Not Disputed. |
| 18 | | makes | Ex. J, at | |
| 19 | | determinati | 35:14-25 | |
| 20 | | ons of | (O'Keefe | |
| 21 | | whether | Depo.). | |
| 22 | | water is an | | |
| 23 | | "extremely | | |
| 24 | | impaired | | |
| 25 | | source." | | |
| 26 | | ı | <u> </u> | |

| 7. | DDW has | Gee Decl. | Not Disputed. |
|----|-------------------|---------------|---------------|
| | determined that | Ex. J, at | |
| | the groundwater | 37:17-21 | |
| | in the Saugus | (O'Keefe | |
| | Formation near | Depo.). | |
| | the Whittaker | | |
| | Site is an | | |
| | "extremely | | |
| | impaired source." | | |
| 8. | DDW has | Gee Decl. | Duplicate |
| | determined that | Ex. J, at | |
| | the groundwater | 37:17-21 | |
| | in the Saugus | (O'Keefe | |
| | Formation near | Depo.). | |
| | the Whittaker | | |
| | Site is an | | |
| | "extremely | | |
| | impaired source." | | |
| 9. | DTSC asked | Stone Decl. ¶ | Not disputed. |
| | SCV Water to | 7. | |
| | prepare a five- | | |
| | year review | | |
| | report in | | |
| | connection with | | |
| | SCV Water's | | |
| | 2005 Interim | | |
| | Remedial | | |

| (| ase 2:18-cv-06825-SB-RAO | Document 255-2 | Filed 12/14/20 | Page 7 of 110 | Page |
|---|--------------------------|----------------|----------------|---------------|------|
| | | ID #:21647 | | | |

| | A | | |
|-----|--------------------|---------------|-----------------------------|
| | Action Plan | | |
| | ("2005 IRAP"), | | |
| | which addressed | | |
| | the groundwater | | |
| | contamination in | | |
| | the vicinity of | | |
| | SCV Water's | | |
| | wells from the | | |
| | Whittaker Site. | | |
| 10. | SCV Water | Stone Decl. ¶ | Not disputed as to what SCV |
| | advised DTSC | 7, Ex. A. | Water advised DTSC. |
| | that it does not | | |
| | believe it is | | |
| | appropriate for | | |
| | DTSC to close | | |
| | out the 2005 | | |
| | IRAP following a | | |
| | five-year review | | |
| | because SCV | | |
| | Water's actions | | |
| | under the 2005 | | |
| | IRAP have not | | |
| | achieved the two | | |
| | objectives of | | |
| | containing the | | |
| | off-site spread of | | |
| | Whittaker's | | |

| | 1 | | |
|-----|--------------------|----------------|------------------------------------|
| | perchlorate | | |
| | contamination | | |
| | and restoring lost | | |
| | groundwater | | |
| | supply caused | | |
| | from the | | |
| | contamination. | | |
| 11. | DTSC advised | Stone Decl. ¶¶ | Disputed in Part. |
| | SCV Water in | 7-8, Ex. B. | |
| | July 2020 that | | |
| | instead of | | Plainly, neither Plaintiff nor DDW |
| | requiring a five- | | believes VOCs pose an |
| | year review of the | | unacceptable risk to their |
| | 2005 IRAP, SCV | | customers. In a recent October |
| | Water will submit | | 2020 internal SCVWA email, |
| | an amended IRAP | | Dirk Marks the Director of Water |
| | to include both | | Resources for SCVWA, admitted |
| | wells V-201 and | | that regulators have "declined to |
| | V- 205 as | | directly order [SCVWA] to |
| | additional | | treat for VOC." On the same e- |
| | containment wells | | mail thread, Mike Alvord, |
| | with treatment | | Director of Maintenance and |
| | facilities to | | Operations, stated "WE do not |
| | contain the spread | | have an inherent VOC issue in |
| | of perchlorate as | | any of our wells. What we are |
| | well as VOCs that | | faced with in 4 Saugus Wells |
| | DDW has | | (Saugus 1, Saugus 2, 201 and 205) |

| 1 | | concluded pose | wells is low levels of VOCs and |
|----|---------|-----------------|------------------------------------|
| 2 | | an unacceptable | the DDW 97-005 process" |
| 3 | | risk to SCV | Trowbridge Decl. II, ¶ 40, Ex. AI, |
| 4 | | Water's | e-mails from SCVWA's Associate |
| 5 | | customers. | Water Resources Planner to Mike |
| 6 | | | Alvord, Director of Operations and |
| 7 | | | Maintenance, Stephen Cole, |
| 8 | | | Assistant General Manager, and |
| 9 | | | Dirk Marks, Director of Water |
| 10 | | | Resources, "VOC Treatment at |
| 11 | | | Well 201," dated Thursday |
| 12 | | | October 14, and Friday October 15, |
| 13 | | | 2020, with Bates Label Range |
| 14 | | | SCVWA-0694227-29. |
| 15 | | | |
| 16 | | | |
| 17 | | | Plaintiff has not offered any |
| 18 | | | evidence to support its assertion |
| 19 | | | that DDW has concluded VOCs |
| 20 | | | pose an unacceptable risk to SCV |
| 21 | | | Water's Customers. DTSC only |
| 22 | | | stated its agrees with SCVWA's |
| 23 | | | proposal to submit a single |
| 24 | | | amendment to the IRAP to include |
| 25 | | | wells V-201 and V-205 which |
| 26 | | | purportedly deals with |
| 27 | | | contamination that SCVWA |
| 28 | | | contends DDW has concluded |
| 20 | 2930843 | | |

| | po | oses an unacceptable health risk. |
|-----|-------------------------------------|--|
| | DI | DW has stated the 97-005 |
| | pre | ocess does not pertain to a health |
| | ba | ased standard. According to Mr. |
| | 0' | 'Keefe, the 97-005 Policy is not a |
| | he | ealth based standard, but one |
| | ba | ased on treatability. Trowbridge |
| | De | ecl., ¶ 29, Ex. AA, O'Keefe |
| | De | epo. at 10:11-18, 84:8-85:6. |
| | Af | fter the installation of the |
| | | erchlorate treatment systems, the |
| | | · |
| | | oncentrations of perchlorate in |
| | | stracted well water were reduced |
| | to | nondetectable and have been and |
| | co | ontinues to be served by SCVWA |
| | to | its customers. Trowbridge |
| | De | ecl., ¶ 6, Ex. D, February 97-005 |
| | Re | eport, at Executive Summary – II |
| | _] | IV; Ex. W, Water Information |
| | Sh | neet, "Well V201: NPDES |
| | $ $ $ $ $ $ $ $ $ $ $ $ $ $ $ $ $ $ | xceedance, SCVWA, July 17, |
| | | 018. |
| | | |
| | | CVWA and DDW have |
| | rej | peatedly determined that it is safe |
| | an | nd that SCVWA has served water |
| | to | its customers containing |
| 1 - | | |
| | | D pri ba |

| 1 | | detectable levels of VOCs below |
|----|--|--------------------------------------|
| 2 | | the MCLs. Trowbridge Decl., ¶ 23, |
| 3 | | Ex. U, Declaration of Keith |
| 4 | | Abercrombie in Support of Partial |
| 5 | | Summary Judgment, October 23, |
| 6 | | 2020 ("Abercrombie MSJ Decl.") |
| 7 | | at ¶¶ 8-9; Trowbridge Decl., ¶ 7, |
| 8 | | Ex. E, Alvord 12/12/19 30(b)(6) |
| 9 | | Depo. at 19:12-23; ¶ 24, Ex. V, |
| 10 | | Deposition of Michael Alvord |
| 11 | | (December 5, 2019)("Alvord |
| 12 | | Depo.") 30:15-31:14. |
| 13 | | |
| 14 | | Whiteless ships to this foot is |
| 15 | | Whittaker objects this fact is |
| 16 | | improperly compound in violation |
| 17 | | of Judge Blumfeld's standing |
| 18 | | order. |
| 19 | Plaintiff Contends there have been Rel | eases of TCE, PCE and Perchlorate at |
| 20 | the Whittaker Facility. | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| 28 | | |
| | 2930843 | |

| 12. | The Whittaker Site is | Gee Decl. | Not Disputed. |
|-----|-------------------------|-------------|---------------|
| | a 996-acre property | Ex. C, at | - |
| | located in the County | 12 | |
| | of Los Angeles, | (Hokkane | |
| | California, at 22116 | n Report); | |
| | West Soledad Canyon | Gee Decl. | |
| | Road in the City of | Ex. U, at | |
| | Santa Clarita. | Table 2-1 | |
| | | (1997 | |
| | | Acton | |
| | | Mickelson | |
| | | Remedial | |
| | | Investigati | |
| | | on | |
| | | Report); | |
| | | RJN Ex. | |
| | | A, at 1061 | |
| | | (Castaic | |
| | | Lake) | |
| 13. | The Whittaker Site is | Gee Decl. | Not disputed. |
| | a former explosives | Ex. C, at | |
| | and munitions | 12 | |
| | manufacturing facility | (Hokkane | |
| | that was in active | n Report); | |
| | operation from at least | Gee Decl. | |
| | 1934 to 1987. | Ex. P at | |
| | | 5:12-13 | |

| 1 | | | (Def.'s | |
|----|---------|-------------------|-----------------|---------------|
| 2 | | | Resp. to | |
| 3 | | | Req. for | |
| 4 | | | Admis.); | |
| 5 | | | Gee Decl. | |
| 6 | | | Ex. U, at | |
| 7 | | | Table 2-1 | |
| 8 | | | (1997 | |
| 9 | | | Acton | |
| 10 | | | Mickelson | |
| 11 | | | Remedial | |
| 12 | | | Investigati | |
| 13 | | | on | |
| 14 | | | Report); | |
| 15 | | | RJN Ex. | |
| 16 | | | A, at 1061 | |
| 17 | | | (Castaic | |
| 18 | | | Lake). | |
| 19 | | | | |
| 20 | 14. | Whittaker used | Gee Decl. | Not disputed. |
| 21 | 14. | perchlorate and | | Not disputed. |
| 22 | | VOCs in its | Ex. C, at | |
| 23 | | operations at the | 12 | |
| 24 | | Site, including | (Hokkane | |
| 25 | | in the | n Report); | |
| 26 | | manufacture of | Gee Decl. | |
| 27 | | ammunition | Ex. E, at 11-13 | |
| 28 | 2930843 | | 11-13 | |

| 1 | rounds, flares | (Dawson |
|----|------------------|-------------|
| 2 | and signal | Report); |
| 3 | cartridges, glow | Gee Decl. |
| 4 | plugs, igniters | Ex. L, at |
| 5 | and rocket | 20:9-21:14 |
| 6 | mortars. | and 210:7- |
| 7 | | 211:11 |
| 8 | | (Dawson |
| 9 | | Depo.); |
| 10 | | Gee Decl. |
| 11 | | Ex. P, at |
| 12 | | 5:12-15 |
| 13 | | (Def.'s |
| 14 | | Resp. to |
| 15 | | Req. for |
| 16 | | Admis.); |
| 17 | | Gee Decl. |
| 18 | | Ex. U, at |
| 19 | | Tables 2-7 |
| 20 | | and 2-8 |
| 21 | | (1997 |
| 22 | | Acton |
| 23 | | Mickelson |
| 24 | | Remedial |
| 25 | | Investigati |
| 26 | | on Report). |
| 27 | | |
| 28 | | |

| 1 | | | | |
|----------|-----|----------------------|--------------|-------------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 1.5 | Whittaker used TCE | C. D. d | NT-4 124- 1 |
| 9 | 15. | and PCE on the Site | Gee Decl. | Not disputed. |
| 10 | | as a degreaser. | Ex. C, at 12 | |
| 11 | | as a degreaser. | (Hokkane | |
| 12 | | | n Report); | |
| 13 | | | Gee Decl. | |
| 14 | | | Ex. G, at 3 | |
| 15 | | | (Hughto | |
| 16 | | | Report). | |
| 17 | | | report). | |
| 18 | | | | |
| 19 | 16. | Whittaker buried | Gee Decl. | Disputed. |
| 20 | | "residual materials | Ex. G, at 4 | From at least 1968 to 1986, the |
| 21 | | and excess | (Hughto | Defense Contractor's |
| 22 23 | | productindiscrimina | Report). | Adminstrative Services, known as |
| 24 | | tely in numerous | | the "DCAS", was charged with |
| 25 | | landfill and surface | | ensuring contractors complied with |
| 26 | | dump locations | | the relevant DOD Safety Manual. |
| 27 | | widespread about the | | DCAS maintained an office at the |
| 28 | | Site." | | site, and always had at least three |
| _3 | | | | |

| 1 | | | | inspectors deployed at the site, at |
|----|-----|------------------------|-----------|-------------------------------------|
| 2 | | | | all times when Whittaker |
| 3 | | | | employees were working overtime, |
| 4 | | | | who ensured Whittaker's burn pit |
| 5 | | | | to ensure compliance with DOD |
| 6 | | | | Safety Manual requirements, |
| 7 | | | | inspected the hog-out areas, and |
| 8 | | | | inspected facilities to ensure |
| 9 | | | | wastes were segregated properly |
| 10 | | | | and placed in appropriate |
| 11 | | | | containers by Bermite employees. |
| 12 | | | | Trowbridge Decl., ¶ 63, Ex. BF, |
| 13 | | | | Findings of Facts and Law, Central |
| 14 | | | | District Case No. 2:09-cv-01734- |
| 15 | | | | GHK-RZ, Docket No. 180, June |
| 16 | | | | 30, 2010, ¶¶ 191-198. |
| 17 | | | | |
| 18 | | | | |
| 19 | 17. | Other "perchlorate | Gee Decl. | Not disputed that perchlorate and |
| 20 | | wastes" and "ignitable | Ex. G, at | other ignitable materials were |
| 21 | | materials" were | 3-4 | burned in burn pits on the Site at |
| 22 | | burned in burn pits on | (Hughto | the direction of the United States |
| 23 | | the Site. | Report). | Government. Trowbridge Decl., ¶ |
| 24 | | | | 63, Ex. BF, Findings of Facts and |
| 25 | | | | Law, Central District Case No. |
| 26 | | | | 2:09-cv-01734-GHK-RZ, Docket |
| 27 | | | | No. 180, June 30, 2010, ¶¶ 191- |
| 28 | | | | |

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| 1 | | | | 198. |
|----|-----|------------------------|-------------|-----------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 1.0 | | | |
| 9 | 18. | Environmental | Gee Decl. | Not disputed. |
| 10 | | remedial | Ex. C, at | |
| 11 | | investigations, | 13 | |
| 12 | | directed by the U.S. | (Hokkane | |
| 13 | | Environmental | n Report). | |
| 14 | | Protection Agency, | | |
| 15 | | began at the Site in | | |
| 16 | | the mid-1980s, and | | |
| 17 | | included collecting | | |
| 18 | | samples of soil, gas, | | |
| 19 | | and groundwater. | | |
| 20 | 19. | VOCs were detected | Gee Decl. | Disputed in Part. Whittaker does |
| 21 | | in Whittaker's | Ex. C, at | not dispute VOCs were detected in |
| 22 | | groundwater | 13 | Whittaker's monitoring wells. |
| 23 | | monitoring wells as | (Hokkane | Whittaker does not dispute VOCs |
| 24 | | early as April 1989, | n Report); | were detected in SCVWA's wells |
| 25 | | and in SCV Water's | Gee Decl. | in the early to mid-1990s, |
| 26 | | wells beginning in the | Ex. D, at 9 | however, it disputes the |
| 27 | | early to mid-1990s. | (Mesard | implication that the VOCs in |
| 28 | | • | | |

2930843

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| | Report). | SCVWA's wells migrated from the Whittaker site, which is not supported by the evidence cited by SCVWA, and is refuted by Whittaker. |
|---|---|---|
| 20. During remedial investigation effected medial investigation effects conducted by Whittaker's consultants, the property was splus everal areas call "Operable Units" (OU-1 through Cand OU-7 for impacted groundwater) based on the location of known source are watersheds, manufacturing operations, and affected media. | Ex. C, at 13 (Hokkane n Report); it into led Decl. Ex. A at 17, and Fig. 14 (Stanin Report). sed | Not disputed. |

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| 1 | 21. | At OU1 through OU6, | Gee Decl. | Not disputed. |
|----|---------|--------------------------|-------------|---------------|
| 2 | | perchlorate and VOCs | Ex. C, at | |
| 3 | | are co-located in | 15-16 | |
| 4 | | varying detection | (Hokkane | |
| 5 | | levels in the soil up to | n Report); | |
| 6 | | 200 feet in depth. | Gee Decl. | |
| 7 | | | Ex. F, at 4 | |
| 8 | | | (Trudell | |
| 9 | | | Report); | |
| 10 | | | Gee Decl. | |
| 11 | | | Ex. O, at | |
| 12 | | | 75:6-14 | |
| 13 | | | (Hokkane | |
| 14 | | | n Depo.); | |
| 15 | | | Gee Decl. | |
| 16 | | | Ex. V, at | |
| 17 | | | 4-3 (2010 | |
| 18 | | | CDM | |
| 19 | | | Smith | |
| 20 | | | Remedial | |
| 21 | | | Action | |
| 22 | | | Plan); | |
| 23 | | | Stanin | |
| 24 | | | Decl. Ex. | |
| 25 | | | A, at 22 | |
| 26 | | | (Stanin | |
| 27 | | | Report). | |
| 28 | 2930843 | | <u> </u> | |

| 1 | | | | |
|----|---------|-------------------------|------------|-------------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | 22. | Whittaker is the only | Stanin | Not disputed. |
| 10 | | site in Santa Clarita | Decl. at | The Hokkanen Report, cited as Ex. |
| 11 | | with documented | ¶16; Gee | C does not support this |
| 12 | | releases of all three | Decl. Ex. | proposition. |
| 13 | | contaminants that | C, at 9-11 | |
| 14 | | have impacted SCV | (Hokkane | |
| 15 | | Water's wells - | n Report). | |
| 16 | | perchlorate, TCE and | | |
| 17 | | PCE. | | |
| 18 | | | | |
| 19 | 23. | Soil, groundwater, | Gee Decl. | Undisputed that some soil, |
| 20 | | and surface water | Ex. C, at | groundwater, and surface water |
| 21 | | were impacted as a | 12 | were "impacted" as a result of |
| 22 | | result of Whittaker's | (Hokkane | Whittaker's manufacturing actives |
| 23 | | manufacturing | n Report); | at the Whittaker Site. Not material |
| 24 | | activities at the Site. | Gee Decl. | as it does not specify where or |
| 25 | | | Ex. O, at | what materials had what |
| 26 | | | 76:16- | unspecified impacts. |
| 27 | | | 77:15 | unspectfied impacts. |
| 28 | | | 11.13 | |
| | 2930843 | | | |

| 1 | (Hokkane |
|----|-------------|
| 2 | n Depo.); |
| 3 | Gee Decl. |
| 4 | Ex. F, at 6 |
| 5 | (Trudell |
| 6 | Report); |
| 7 | Gee Decl. |
| 8 | Ex. T, at |
| 9 | 3, Table 2 |
| 10 | (1987 |
| 11 | Wenck |
| 12 | Revised |
| 13 | RCRA |
| 14 | Closing |
| 15 | Plan); |
| 16 | Stanin |
| 17 | Decl. at |
| 18 | ¶11; |
| 19 | Stanin |
| 20 | Decl. Ex. |
| 21 | A, at 1, 3, |
| 22 | 15-18 |
| 23 | (Stanin |
| 24 | Report). |
| 25 | Kepon). |
| 26 | |
| 27 | |

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| 1 | 24. | The primary | Gee Decl. | Not dispute that perchlorate and |
|----|---------|------------------------|------------|-----------------------------------|
| 2 | | contaminants in the | Ex. C, at | VOCs are generally co-located |
| 3 | | groundwater beneath | 16 | within the groundwater within the |
| 4 | | the Whittaker Site are | (Hokkane | confines of the Whittaker Site. |
| 5 | | perchlorate and | n Report); | |
| 6 | | VOCs, including TCE | Gee Decl. | |
| 7 | | and PCE, and these | Ex. O, at | Objection that this statement is |
| 8 | | contaminants are co- | 76:11- | "compound." |
| 9 | | located within the | 77:15 | |
| 10 | | groundwater. | (Hokkane | |
| 11 | | | n Depo.); | |
| 12 | | | Gee Decl. | |
| 13 | | | Ex. AB, at | |
| 14 | | | Table 3 | |
| 15 | | | (2014 | |
| 16 | | | AECOM | |
| 17 | | | Remedial | |
| 18 | | | Action | |
| 19 | | | Plan); | |
| 20 | | | Stanin | |
| 21 | | | Decl. at | |
| 22 | | | ¶12; | |
| 23 | | | Stanin | |
| 24 | | | Decl. Ex. | |
| 25 | | | | |
| 26 | | | A, at 23- | |
| 27 | | | 27 (Stanin | |
| 28 | | | Report). | |
| | 2930843 | | | |

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| 7 | | | | |
| 8 | 25 | Whitteless is the only | G. · | |
| 9 | 25. | Whittaker is the only | Stanin | Disputed that Plaintiff's evidence, |
| 10 | | site in the area with a | Decl. at | a conclusory statement in an |
| 11 | | co-location of | ¶16; | affidavit unsupported by any |
| 12 | | perchlorate, TCE and | Stanin | factual basis, establishes this fact. |
| 13 | | PCE. | Decl. Ex. | Perhclorate and Chlorinated |
| 14 | | | A, at 20- | Solvents. The Saugus Swap Meet |
| 15 | | | 21, 31-34 | Property, Envirostor Site Number |
| 16 | | | (Stanin | 60000428, states that action is |
| 17 | | | Report); | required pertaining to the cleanup, |
| 18 | | | Gee Decl. | including perchlorate and VOCs. |
| 19 | | | Ex. F, at | Envirostor Page, Saugus Swap |
| 20 | | | 6-8 | Meet Property, |
| 21 | | | (Trudell | https://www.envirostor.dtsc.ca.gov |
| 22 | | | Report). | /public/profile_report?global_id=6 |
| 23 | | | | 0000428. |
| 24 | | | | |
| | | | | |

| 1 | 26. | Whittaker is the only | Stanin | Disputed that Plaintiff's evidence, |
|----|---------|------------------------|------------|---------------------------------------|
| 2 | | site with all three | Decl. ¶16. | a conclusory statement in an |
| 3 | | contaminants located | | affidavit unsupported by any |
| 4 | | upgradient from all of | | factual basis, establishes this fact. |
| 5 | | SCV Water's | | Perhclorate and Chlorinated |
| 6 | | impacted wells, | | Solvents. The Saugus Swap Meet |
| 7 | | including Saugus-1 | | Property, Envirostor Site Number |
| 8 | | and Saugus-2. | | 60000428, states that action is |
| 9 | | | | required pertaining to the cleanup, |
| 10 | | | | including perchlorate and VOCs. |
| 11 | | | | Envirostor Page, Saugus Swap |
| 12 | | | | Meet Property, |
| 13 | | | | https://www.envirostor.dtsc.ca.gov |
| 14 | | | | /public/profile_report?global_id=6 |
| 15 | | | | 0000428. |
| 16 | 27. | Whittaker is the only | Stanin | Not disputed. |
| 17 | | site in Santa Clarita | Decl. ¶16. | • |
| 18 | | for which the | " | |
| 19 | | California Department | | |
| 20 | | of Toxic Substances | | |
| 21 | | Control ("DTSC") has | | |
| 22 | | issued and Imminent | | |
| 23 | | and Substantial | | |
| 24 | | Endangerment Order | | |
| 25 | | that requires | | |
| 26 | | groundwater cleanup | | |
| 27 | | of the perchlorate, | | |
| 28 | 2930843 | | | |

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| 1 | | TCE and PCE. | | |
|----|-----|-----------------------|------------|------------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 20 | There are known | G. | No. 12 and 1 days |
| 9 | 28. | | Stanin | Not disputed that there are |
| 10 | | pathways for releases | Decl. ¶¶8, | pathways for groundwater to travel |
| 11 | | from the Whittaker | 13; Stanin | from the Whittaker Site to |
| 12 | | Site and SCV Water's | Decl. Ex. | Plaintiff's wells. |
| 13 | | wells, including | A, at 35- | |
| 14 | | through groundwater. | 36 (Stanin | |
| 15 | | | Report); | |
| 16 | | | Gee Decl. | |
| 17 | | | Ex. O, at | |
| 18 | | | 116:24- | |
| 19 | | | 117:17 | |
| 20 | | | (Hokkane | |
| 21 | | | n Depo.). | |

1 While there is a "Plausible Pathway" from the Site to SCVWA's Water 2 Wells, the Groundwater Monitoring Data Demonstrates VOCs have Not 3 Migrated from the Whittaker Site to Plaintiff's Wells 4 5 6 7 8 There are known Stanin 29. 9 pathways for releases Decl. ¶¶8, 10 from the Whittaker 13; Stanin 11 Site and SCV Water's Decl. Ex. 12 wells, including A, at 35-13

36 (Stanin

Gee Decl.

Ex. O, at

116:24-

117:17

(Hokkane

n Depo.).

Report);

through groundwater.

Not disputed, that there are known pathways for unspecified releases to theoretically reach SCV Water wells through groundwater.

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| 1 | 30. | Perchlorate, TCE, and | Stanin | Not disputed. |
|----|-----|-----------------------|------------|---------------------------------------|
| 2 | | PCE on the Whittaker | Decl. ¶8; | _ |
| 3 | | property reached the | Gee Decl. | |
| 4 | | groundwater. | Ex. C, at | |
| 5 | | | 45-47 | |
| 6 | | | (Hokkane | |
| 7 | | | n Report). | |
| 8 | 21 | Whiteless's council | G D 1 | NY . 1' 1 .1 . XXXI ' 1 . 1 |
| 9 | 31. | Whittaker's counsel | Gee Decl. | Not disputed that Whittaker's |
| 10 | | acknowledged that | $\P 2.$ | counsel acknowledged the |
| 11 | | one or more "probable | | existence of possible pathways for |
| 12 | | pathways" exist for | | VOCs to migrate from the |
| 13 | | VOCs to migrate from | | Whittaker Site. Disputed to the |
| 14 | | the Whittaker Site to | | extent Plaintiff contends any |
| 15 | | SCV Water's wells. | | specific pathway was |
| 16 | | | | acknowledged. |
| 17 | 32. | The release of VOCs | Stanin | Disputed in part. The site is 996 |
| 18 | | on the Site are | Decl. ¶¶8, | acres, and Plaintiff appears to refer |
| 19 | | hydrologically | 13; Stanin | to 4 separate wells in different |
| 20 | | upgradient from SCV | Decl. Ex. | locations. Whittaker disputes all |
| 21 | | Water's wells. | A, at 27, | releases of VOCs at the Whittaker |
| 22 | | | 48 (Stanin | site are hydrologically upgradient |
| 23 | | | Report); | from SCV's Water wells. |
| 24 | | | Gee Decl. | |
| 25 | | | Ex. F, at | |
| 26 | | | 19 | |
| 27 | | | (Trudell | |
| 28 | | 1 | <u>1</u> | |

| 1 | | | Report). | |
|----|-----|--------------------------|--------------|--------------------------------------|
| 2 | | | | |
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| 6 | | | | |
| 7 | | | | |
| 8 | 22 | In the area of the | G D 1 | |
| 9 | 33. | | Gee Decl. | Disputed in Part, too general to be |
| 10 | | Whittaker Site, the | Ex. C, at | material. While there are areas of |
| 11 | | layers of the Saugus | 14 and | the Saugus Formation which dip, |
| 12 | | Formation dip to the | Fig. 3 | the Site has diverse geology. |
| 13 | | northwest. | (Hokkane | |
| 14 | | | n Report). | |
| 15 | | | | |
| 16 | | Groundwater flow | Stanin | Not disputed groundwater flow |
| 17 | | from the Whittaker | Decl. ¶¶8, | from the Whittaker Site is |
| 18 | | Site is in the direction | 13; Gee | generally in the direction of |
| 19 | | of SCV Water's wells. | Decl. Ex. | SCVWA's Saugus 1, Saugus 2, V- |
| 20 | | | C, at 14-15, | 201 and V-205 wells. |
| 21 | | | 49-50 | Disputed that all groundwater from |
| 22 | | | and Figs. | the Whittaker site is migrating |
| 23 | | | 11-17 | towards Plaintiff's wells. |
| 24 | | | (Hokkane | Groundwater elevation data |
| 25 | | | n Report); | indicate that flow in western OU-5 |
| 26 | | | Gee Decl. | is not towards Plaintiff's Saugus 1, |
| 27 | | | Ex. O, at | Saugus 2, V-201, and V-205 wells. |
| 28 | | | | Saugus 2, v-201, and v-203 wens. |

| 1 | | 76:11- | Expert Report of Anthony Daus |
|---------------------|------------------------|-------------|--------------------------------------|
| 2 | | 77:15 | "Daus Expert Report," at p. 22. |
| 3 | | (Hokkane | The Saugus and Alluvial aquifers |
| 4 | | n Depo.). | that exist in the Site are |
| 5 | | | heterogeneous, and groundwater |
| 6 | | | flow varies substantially in |
| 7 | | | different portions of the aquifer |
| 8 | | | systems. Trowbridge Decl., Ex. |
| 9 | | | AJ, Hokkanen Deposition |
| 10 | | | Transcript, p. 120:2-18; 122:19- |
| 11 | | | 123:1; 178:6-16; Trowbridge |
| 12 | | | Decl., Ex. AK, Daus Deposition |
| 13 | | | Transcript, p. 83:5-25; 106:19- |
| 14 | | | 107:1; 126:13-127:2. |
| 15 | | Gee Decl. | 107.1, 120.13-127.2. |
| 16 | All of SCV Water's | | Not disputed, now that Plaintiff has |
| 17 | wells at issue in this | Ex. C, at 7 | dropped its claim regarding Q-2, |
| 18 | case are completed in | (Hokkanen | which it previously pursued. |
| 19 | the Saugus Formation. | Report); | |
| 20 | | Stanin | |
| 21 | | Decl. Ex. | |
| 22 | | A, at 27 | |
| 23 | | (Stanin | |
| 24 | | Report). | |
| ∠ - T | | | |

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| 1 | | The shallowest | Stanin | Not disputed. |
|----|---------|-------------------------|--------------|--------------------------------------|
| 2 | | aquifer of the | Decl. Ex. | 1 |
| 3 | | subbasin groundwater | A, at 7 | |
| 4 | | units consists of the | (Stanin | |
| 5 | | recent and older | Report); | |
| 6 | | alluvium (collectively, | Gee Decl. | |
| 7 | | the Alluvial aquifer), | Ex. C, at 4 | |
| 8 | | whereas the deeper | (Hokkanen | |
| 9 | | aquifer units occur in | Report). | |
| 10 | | the Saugus Formation, | | |
| 11 | | which is beneath all of | | |
| 12 | | the subbasin. | | |
| 13 | | Perchlorate has | Gee Decl. | NI-4 1'4-141-4 |
| 14 | | migrated through the | Ex. C, at 17 | Not disputed that some perchlorate |
| 15 | | groundwater in a | (Hokkanen | has migrated from the Whittaker |
| 16 | | northwesterly | Report); | Site in a northwesterly direction in |
| 17 | | direction in the | Gee Decl. | the alluvium. |
| 18 | | alluvium in the | Ex. L, at | |
| 19 | | direction of | 255:13- | Disputed that perchlorate from all |
| 20 | | groundwater flow. | 256:17 | portions of the Site flow in a |
| 21 | | groundwater now. | (Dawson | "northwesterly direction." |
| 22 | | | Depo.). | Groundwater elevation data |
| 23 | | | T says | indicate that flow in western OU-5 |
| 24 | | | | is not towards Plaintiff's Saugus 1, |
| 25 | | | | Saugus 2, V-201, and V-205 wells. |
| 26 | | | | Expert Report of Anthony Daus |
| 27 | | | | "Daus Expert Report," at p. 22. |
| 28 | 2930843 | | | |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | 37. | Dissolved perchlorate and VOCs migrate in the groundwater along the same flow path as perchlorate contamination . | Gee Decl. Ex. C, at 24 (Hokkanen Report); Gee Decl. Ex. F, at 15-16 (Trudell Report); Gee Decl. Ex. AC, at 2-4 to 2-5 (2015 CH2M Hill VOC Investigati on Report); Stanin Decl. ¶8; Stanin Decl. Ex. A, at 5 | In some areas of the Site, including HSU S-IIIc, groundwater flows to the southeast near the Bermite Site, and in HSU S-Va is to the west and southwest. Hokkanen Decl., Ex. 1, Hokkanen Expert Report, August 3, 2020, at p. 16. Not disputed as to the general proposition that dissolved perchlorate and VOCs generally migrate in groundwater along the same flow path. Disputed to the extent SCVWA implies that VOCs could have migrated in surface water as was determined to be the source of migration in the Castaic Lake Water Agency v. Whittaker Corp., 272 F.Supp.2d 1053, 1067. Perchlorate is a non-volatile chemical that is highly soluble in water. Unlike perchlorate, TCE and PCE, volatile organic compounds, quickly volatilize (evaporate) in surface water. |
|--|-----|---|---|---|
|--|-----|---|---|---|

| 1 | | | (Stanin | Hokkanen Decl., ¶¶ 14, 16. |
|----|-----|----------------|---------------|-------------------------------------|
| 2 | | | Report). | Additionally, the TAC specifically |
| 3 | | | | alleges the VOCs migrated to |
| 4 | | | | groundwater beneath the Whittaker |
| 5 | | | | Site before allegedly migrating to |
| 6 | | | | SCVWA's Production Wells. |
| 7 | | | | Trowbridge Decl., ¶ 4, Ex. A, TAC |
| 8 | | | | ¶¶ 18-19. |
| 9 | 38. | Numerous other | Gee Decl. | Disputed in part. Several |
| 10 | | contaminates, | Ex. AC, at | contaminants detected in |
| 11 | | [sic] besides | 2-4 to 2- 5 | SCVWA's wells are not detected at |
| 12 | | perchlorate, | (2015 | the Western Boundary of the Site, |
| 13 | | TCE, and PCE | CH2M Hill | including Chloroform, which is |
| 14 | | found at the | VOC | prevalent in monitoring wells at or |
| 15 | | Whittaker Site | Investigation | adjacent to the SIC Site, which are |
| 16 | | have also been | Report); Gee | extremely close in proximity to |
| 17 | | found in SCV | | Plaintiff's Saugus 1 and 2 Wells. |
| 18 | | Water's wells. | | Hokkanen Decl., ¶ 71-76, 84-87. |
| 19 | | | | The fact as described is not |
| 20 | | | | material as it is so vague as to be |
| 21 | | | | rendered meaningless. It does not |
| 22 | | | | identify any other contaminates |
| 23 | | | | aside from Perchlorate, TCE and |
| 24 | | | | PCE. |
| 25 | | | | |

| 1 | 39. | Perchlorate and | Gee Dec |
|----|---------|------------------|-----------|
| 2 | | VOC flow rates | C, at 46 |
| 3 | | and flow paths | (Hokkan |
| 4 | | towards SCV | Report); |
| 5 | | Water's wells | Decl. Ex |
| 6 | | varied over time | at 8-10 |
| 7 | | depending on | (Trudell |
| 8 | | groundwater | Report); |
| 9 | | levels and | Stanin D |
| 10 | | groundwater | ¶8; Stani |
| 11 | | pumping rates. | Decl. |
| 12 | | | Ex. A., a |
| 13 | | | (Stanin |
| 14 | | | Report). |
| 15 | | | |
| 16 | | | |
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| 25 | | | |
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| | 2930843 | | |

ecl. Ex. 16 anen t); Gee Ex. F, 0 e11 t); Decl. anin , at 5-6 n

Not disputed that VOC Flow rates varied overtime. Disputed in that flow paths varied. Plaintiff's Expert, Mark Trudell, opines that the perchlorate plume and VOC plume are migrating on "exactly the same flowpath." Gee Decl., Ex. F. at 16-17. This fact is plainly disputed by Plaintiff's own expert, Dr. Trudell, and appears to contradict Plaintiff's Statement at 37.

Mr. Hokkanen's report also conflicts with this statement "The primary mechanism controlling the migration of chemicals is the movement of groundwater itself....in other words, when a chemical is dissolved in groundwater it will move with and in the same direction groundwater is moving. If you know where groundwater is moving, you know where the chemical is moving." Gee Decl. Ex. C, at 46 (Hokkanen Report). See Hokkanen Decl., 19-23.

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| 7 | | | | |
| 8 | | | | |
| 9 | Plaintiff has Not and Cannot Establish TCE and PCE Detected in its Water | | | |
| 10 | Wells | s came from the Wh | ittaker Site | |
| 11 | | | | |
| 12 | | | | |
| 13 | | | | |
| 14 | | | | |
| 15 | | | | |
| 16 | 40. | TCE and PCE | Stanin Decl. | Not disputed that TCE and PCE |
| 17 | | have been | ¶8; Stanin | from sources Plaintiff does not |

| 40. | TCE and PCE | Stanin Decl. | Not disputed that TCE and PCE |
|-----|-----------------|--------------|-------------------------------------|
| | have been | ¶8; Stanin | from sources Plaintiff does not |
| | detected in the | Decl. Ex. A, | identify have been detected in |
| | wells | at 26-27 | some wells downgradient from the |
| | downgradient | (Stanin | Whittaker Site. |
| | from the | Report); Gee | Disputed that TCE and PCE from |
| | Whittaker Site. | Decl. Ex. C, | the Whittaker Site have been |
| | | at 8- 10 | detected in downgradient wells off |
| | | (Hokkanen | of the Whittaker Site. Hokkanen |
| | | Report). | Decl., ¶ 5; 19-30. Daus Decl. ¶¶ 3- |
| | | | 11. The groundwater quality data |
| | | | demonstrates that VOCs have not |

| | <u> </u> | | | |
|----|----------|-------------------|---------------|-------------------------------------|
| 1 | | | | migrated beyond the OU-4 |
| 2 | | | | boundary. Hokkanen Decl., ¶¶ 5; |
| 3 | | | | 19-30. Daus Decl. ¶¶ 3-11; Ex. 1, |
| 4 | | | | Daus Expert Report, p. 23. |
| 5 | | | | |
| 6 | | | | N-4-1-1 |
| 7 | | | | Notably, another one of Plaintiff's |
| 8 | | | | wells, NC-11 is located |
| 9 | | | | immediately west of OU-2 and |
| 10 | | | | OU-3 and is screened from 200 |
| 11 | | | | feet bgs to 1075 feet bgs. The |
| 12 | | | | CDPH database indicates that PCE |
| 13 | | | | and TCE were never detected in |
| 14 | | | | NC-11 from 1985-2001 (when it |
| 15 | | | | was rendered inactive). Daus Decl. |
| 16 | | | | ¶ 3; Ex. 1, Daus Expert Report, |
| 17 | | | | FN, 6. |
| 18 | | | | Whittaker objects that this fact is |
| 19 | | | | compound. |
| 20 | 41. | SCV Water's | Stonin Dool | - |
| 21 | 41. | | Stanin Decl. | Not disputed that perchlorate, TCE |
| 22 | | Saugus-1 and | ¶14; Stanin | and PCE have been detected in |
| | | Saugus- 2 wells | Decl. Ex. A, | Saugus 1 and Saugus 2 wells. |
| 23 | | are impacted | at 27 (Stanin | Disputed to the extent SCVWA |
| 24 | | with perchlorate, | Report); Gee | contends TCE and PCE detected in |
| 25 | | TCE, and PCE. | Decl. Ex. C, | the Saugus 1 and 2 Wells migrated |
| 26 | | | at 4, 8-10 | from the Whittaker Site and that |
| 27 | | | (Hokkanen | TCE and PCE from the Whittaker |
| 28 | 2020042 | | <u> </u> | <u> </u> |

| 1 | | Report). | Site have been detected in |
|----|--|----------|-------------------------------------|
| 2 | | | downgradient wells off of the |
| 3 | | | Whittaker Site. |
| 4 | | | Hokkanen Decl., ¶¶ 5; 19-30. |
| 5 | | | Daus Decl. ¶¶ 3-11.; Ex. 1, Daus |
| 6 | | | Expert Report, p. 23. |
| 7 | | | |
| 8 | | | The groundwater quality data |
| 9 | | | demonstrates that VOCs have not |
| 10 | | | migrated beyond the OU-4 |
| 11 | | | boundary, and that that they have |
| 12 | | | migrated to Plaintiff's Saugus 1, |
| 13 | | | Saugus 2, V-201, or V-205 wells. |
| 14 | | | Hokkanen Decl., ¶¶ 5; 19-30. |
| 15 | | | Daus Decl. ¶¶ 3-11.; Ex. 1, Daus |
| | | | Expert Report, p. 23. |
| 16 | | | |
| 17 | | | |
| 18 | | | Notably, another one of Plaintiff's |
| 19 | | | wells, NC-11 is located |
| 20 | | | immediately west of OU-2 and |
| 21 | | | OU-3 and is screened from 200 |
| 22 | | | feet bgs to 1075 feet bgs. The |
| 23 | | | CDPH database indicates that PCE |
| 24 | | | and TCE were never detected in |
| 25 | | | NC-11 from 1985-2001 (when it |
| 26 | | | was rendered inactive). Daus Decl. |
| 27 | | | ¶ 3; Ex. 1, Daus Expert Report, |
| 28 | | | <u> </u> |

| 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | 42. | SCV Water's V- 201 and V- 205 wells have been impacted by perchlorate and TCE. | Stanin Decl. ¶14; Stanin Decl. Ex. A, at 27 (Stanin Report); Gee Decl. Ex. C, at 4, 8-10 (Hokkanen Report). | Not disputed to the extent SCVWA contends the V-201 and V-205 have been impacted by perchlorate and TCE from an unspecified source. Disputed to the extent SCVWA contends TCE that impacted its V-201 and V-205 Wells. Plaintiff's own expert Hydrogeologist, Mark Trudell, testified that Whittaker was not the source of VOC contamination in at least two (2) of the wells at issue. Trowbridge Decl. II, ¶ 43, Ex. AL Deposition of Dr. Mark Trudell ("Trudell Depo.") at 165:8-13; 170:12-171:3. |
|--|-----|--|---|---|
|--|-----|--|---|---|

| 1 | | | | demonstrates that VOCs have not |
|----|-----|-------------------|---------------|---------------------------------------|
| 2 | | | | migrated beyond the OU-4 |
| 3 | | | | boundary, and that that they have |
| 4 | | | | migrated to Plaintiff's Saugus 1, |
| 5 | | | | Saugus 2, V-201, or V-205 wells. |
| 6 | | | | Hokkanen Decl., ¶¶ 5; 19-30. |
| 7 | | | | Daus Decl. ¶¶ 3-11; Ex. 1, Daus |
| 8 | | | | Expert Report, p. 23. |
| 9 | 43. | TCE and PCE | Stanin Decl. | Not disputed that TCE and PCE |
| 10 | | were first | ¶14; Stanin | were detected in Plaintiff's wells in |
| 11 | | detected in the | Decl. Ex. A, | the early 1990s. |
| 12 | | wells closest to | at 27 (Stanin | |
| 13 | | the Whittaker | Report). | |
| 14 | | Site, Saugus-1 | _ | Disputed that TCE has been |
| 15 | | and Saugus-2, in | | consistently detected in Wells V- |
| 16 | | the early 1990s; | | 201, and V-205. TCE was first |
| 17 | | TCE has been | | detected in V-205 in 2012. TCE |
| 18 | | consistently | | was first detected in 2017 in V- |
| 19 | | detected in wells | | 201. Hokkanen Decl., ¶¶ 45. |
| 20 | | V-201 and V- | | |
| 21 | | 205, which are | | Whittaker objects this purported |
| 22 | | further | | fact is "compound." |
| 23 | | downgradient, | | Tate 15 Composition |
| 24 | | beginning in | | |
| 25 | | 2010. | | |
| 26 | | <u> </u> | <u> </u> | |

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SCVWA Does not establish that TCE or PCE detected in its Wells Threaten its Water Supply or Any Other Wells

| 44. | TCE and PCE | Stanin Decl. | Not disputed that TCE and PCE |
|-----|------------------|----------------|--------------------------------------|
| | have been | ¶14; Stanin | have been detected in some |
| | detected in | Decl. Ex. A, | unspecified, but not all, monitoring |
| | monitoring wells | at 27-30 | wells at the Whittaker Site. |
| | located at the | (Stanin | Hokkanen Decl. ¶ 35-43. |
| | Whittaker Site. | Report); Gee | |
| | | Decl. Ex. C, | Whittaker chieats this purported |
| | | at 23 | Whittaker objects this purported |
| | | (Hokkanen | fact is "compound." |
| | | Report); Gee | |
| | | Decl. Ex. F, | |
| | | at 10 (Trudell | |
| | | Report). | |

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27

| 1 2 | 45. | TCE and PCE | Stanin | Disputed that TCE and PCE are |
|-----|---------|--------------------|--------------|--------------------------------------|
| 3 | | emanating from | Decl. ¶¶ 8, | "emanating from the Site." |
| 4 | | the Whittaker | 13; Stanin | Plaintiff's own expert |
| 5 | | Site are following | Decl. Ex. | Hydrogeologist, Mark Trudell, |
| 6 | | the same pathway | A, at 27, 48 | testified that Whittaker was not the |
| 7 | | as the perchlorate | (Stanin | source of VOC contamination in at |
| | | that has impacted | Report); | least two (2) of the wells at issue. |
| 8 | | SCV Water's | Gee Decl. | Trowbridge Decl. II, ¶ 43, Ex. AL |
| 9 | | Saugus 1, Saugus | Ex. C, at | Deposition of Dr. Mark Trudell |
| 10 | | 2, V-201 and V- | 21-22 and | ("Trudell Depo.") at 165:8-13; |
| 11 | | 205 wells. | Figs. A and | 170:12-171:3. |
| 12 | | | В | The groundwater quality data |
| 13 | | | (Hokkanen | demonstrates that VOCs have not |
| 14 | | | Report). | migrated beyond the OU-4 |
| 15 | | | | boundary, and that that they have |
| 16 | | | | migrated to Plaintiff's Saugus 1, |
| 17 | | | | |
| 18 | | | | Saugus 2, V-201, or V-205 wells. |
| 19 | | | | Hokkanen Decl., ¶¶ 5; 19-30. |
| 20 | | | | Daus Decl. ¶¶ 3-11; Ex. 1, Daus |
| 21 | | | | Expert Report, p. 23. Further, the |
| 22 | | | | data suggests that Whittaker's |
| 23 | | | | remedial measures are capturing |
| 24 | | | | the VOC plume on site and |
| 25 | | | | preventing it from migrating to |
| 26 | | | | Plaintiff's Saugus 1, Saugus 2, V- |
| 27 | | | | 201 and V-205 wells. Daus Decl. |
| 28 | | | | ¶¶ 3-12. |
| 40 | 2930843 | <u> </u> | <u> </u> | I |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | 48. | SCV Water has two primary sources of drinking water to provide to customers— groundwater and imported purchased water from the State Water Project. Purchased water from the State water Project is more expensive because it must be imported, treated and transported through the California Aqueduct to | Abercrombi e Decl. ¶ 2; Abercrombi e Decl. Ex. C, at ¶ 2. Abercrombie Decl. ¶ 2; Abercrombie Decl. Ex. C, at ¶¶ 3-4. | Disputed that cost is the only consideration in deciding whether to purchase State Water Project imported water, or even a relevant consideration. SCVWA's Urban Water Management Plan prescribes specific uses of water and breakdowns between the pumped water, and purchased water, both in order to ensure the groundwater sources remain sustainable by preventing over pumping. Plaintiff has consistently |
|---|---------|---|---|--|
| 15 16 17 18 19 20 21 | 2930843 | Water Project is more expensive because it must be imported, treated and transported through the California | Abercrombie Decl. Ex. C, | purchase State Water Project imported water, or even a relevant consideration. SCVWA's Urban Water Management Plan prescribes specific uses of water and breakdowns between the pumped water, and purchased water, both in order to ensure the groundwater sources remain sustainable by preventing over |

| 1 | extract and treat. | V-205 wells being out of service in |
|----|--------------------|---|
| 2 | | various years, SCVWA reported to its |
| 3 | | customers it maintained sufficient |
| 4 | | pumping capacity in the Saugus |
| 5 | | formation to meet the planned normal |
| 6 | | range ¹ of pumping as described in the |
| 7 | | 2010 Urban Water Management Plan. |
| 8 | | Trowbridge Decl. II, ¶¶ 52-57, Ex. AU, |
| 9 | | 2014 Santa Clarita Valley Water |
| 10 | | Report, at ES6, Ex AV, 2015 Santa |
| 11 | | Clarita Valley Water Report, at ES-6; |
| 12 | | Ex. AW 2016 Santa Clarita Valley |
| 13 | | Water Report, at ES-5; Ex. AX 2017 |
| 14 | | Santa Clarita Valley Water Report, at |
| 15 | | ES-5; Ex. AY 2018 Santa Clarita Valley |
| 16 | | Water Report, at ES-5, Ex. AZ 2019 |
| 17 | | Santa Clarita Valley Water Report, at |
| 18 | | ES-2. It also stated that it had vast |
| 19 | | reserves of "banked" water available to |
| 20 | | provide to its customers in the event of a |
| 21 | | dry year or an emergency. <i>Id.</i> at Tables |
| 22 | | 4-1. |
| 23 | | |
| 24 | | |
| 25 | | |

26

27

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¹ To comply with its Urban Water Management Plans and to ensure the Saugus Aquifer remains sustainable, as groundwater elevations are generally decreasing.

| 1 | |
|----|--|
| 2 | |
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| 5 | |
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| 18 | |
| 19 | |
| 20 | |
| 21 | |
| 22 | |
| 23 | |
| 24 | |
| 25 | |
| 26 | |
| 27 | |

SCV Water uses groundwater to the maximum extent possible to maintain a reasonable cost of water to its customers.

49.

Abercrombie Decl. ¶ 2.

Disputed. This is not the only, or even a significant consideration in deciding whether to purchase State Water Project imported water according to what SCVWA tells its customers. SCVWA's Urban Water Management Plan prescribes specific uses of water and breakdowns between the pumped water, and purchased water, both in order to ensure the groundwater sources remain sustainable by preventing over pumping. Plaintiff has consistently pumped, and reported to its customers, that the pumping capacity in the Saugus Formation is well within the normal prescribed pumping range. In its 2014-2019 annual reports, despite V-201 and V-205 wells being out of service in various years, SCVWA reported to its customers it maintained sufficient pumping capacity in the Saugus formation to meet the planned normal range of pumping as described in the 2010 Urban Water Management Plan. It also reported that in dry years, it could pump up to three times that amount from the Saugus Formation for a

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| 1 | maximum of three years in order to |
|----|---|
| 2 | maintain the sustainability of the |
| 3 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 4 | Ex. AU, 2014 Santa Clarita Valley |
| 5 | Water Report, at ES6, Ex AV, 2015 |
| 6 | Santa Clarita Valley Water Report, at |
| 7 | ES-6; Ex. AW 2016 Santa Clarita |
| 8 | Valley Water Report, at ES-5; Ex. AX |
| 9 | 2017 Santa Clarita Valley Water |
| 10 | Report, at ES-5; Ex. AY 2018 Santa |
| 11 | Clarita Valley Water Report, at ES-5, |
| 12 | Ex. AZ 2019 Santa Clarita Valley Water |
| 13 | Report, at ES-2. Each and every year of |
| 14 | the available reports on SCVWA's |
| 15 | website state that Saugus Formation |
| 16 | pumping has been over the average |
| 17 | amount pumped from the Saugus |
| 18 | Formation since 1980. <i>Id.</i> It also stated |
| 19 | that it had vast reserves of "banked" |
| 20 | water available to provide to its |
| 21 | customers in the event of a dry year or |
| 22 | an emergency. <i>Id.</i> at Tables 4-1. |
| 23 | |
| 24 | SCVWA repeatedly reported to its |
| 25 | customers that pumping from the |
| 26 | Saugus formation was within the normal |
| 27 | range as projected by its Urban Water |
| 28 | |

| 1 | | | | Management Plans, and that if it were |
|----|---------|-------------------|-------------|--|
| 2 | | | | necessary, SCVWA could pump more |
| 3 | | | | than 3 times that production from the |
| 4 | | | | Saugus formation alone to account for |
| 5 | | | | dry years. SCVWA offers no |
| 6 | | | | explanation as to why they would not |
| 7 | | | | use one of the other 10 wells located in |
| 8 | | | | the Saugus Formation to pump |
| 9 | | | | additional groundwater. Trowbridge |
| 10 | | | | Decl. II, ¶¶ 52-57, Ex. AU-AZ, 2014 |
| 11 | | | | Santa Clarita Valley Water Report, at |
| 12 | | | | Tables 3-1. |
| 13 | | | | |
| 14 | | | | |
| 15 | 50. | When | Abercrombie | Disputed. SCVWA's Urban Water |
| 16 | | groundwater | Decl. ¶ 3. | Management Plan prescribes specific |
| 17 | | wells become | Been. 3. | uses of water and breakdowns between |
| 18 | | contaminated, | | the pumped water, and purchased water, |
| 19 | | SCV Water turns | | both in order to ensure the groundwater |
| 20 | | off the | | sources remain sustainable by |
| 21 | | contaminated | | preventing over pumping. Plaintiff has |
| 22 | | well and | | consistently pumped, and reported to its |
| 23 | | supplement the | | customers, that the pumping capacity in |
| 24 | | lost water supply | | the Saugus Formation is well within the |
| 25 | | with purchased | | normal prescribed pumping range. In its |
| 26 | | water from the | | 2014-2019 annual reports, despite V- |
| 27 | | State Water | | 201 and V-205 wells being out of |
| 28 | 0020042 | | | |

| 1 | Project. | service in various years, SCVWA |
|----|----------|---|
| 2 | | reported to its customers it maintained |
| 3 | | sufficient pumping capacity in the |
| 4 | | Saugus formation to meet the planned |
| 5 | | normal range of pumping as described in |
| 6 | | the 2010 Urban Water Management |
| 7 | | Plan. It also reported that in dry years, it |
| 8 | | could pump up to three times that |
| 9 | | amount from the Saugus Formation for a |
| 10 | | maximum of three years in order to |
| 11 | | maintain the sustainability of the |
| 12 | | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 13 | | Ex. AU, 2014 Santa Clarita Valley |
| 14 | | Water Report, at ES6, Ex AV, 2015 |
| 15 | | Santa Clarita Valley Water Report, at |
| 16 | | ES-6; Ex. AW 2016 Santa Clarita |
| 17 | | Valley Water Report, at ES-5; Ex. AX |
| 18 | | 2017 Santa Clarita Valley Water |
| 19 | | Report, at ES-5; Ex. AY 2018 Santa |
| 20 | | Clarita Valley Water Report, at ES-5, |
| 21 | | Ex. AZ 2019 Santa Clarita Valley Water |
| 22 | | Report, at ES-2. Each and every year of |
| 23 | | the available reports on SCVWA's |
| 24 | | website state that Saugus Formation |
| 25 | | pumping has been over the average |
| 26 | | amount pumped from the Saugus |
| 27 | | Formation since 1980. <i>Id.</i> It also stated |
| 28 | | <u> </u> |
| | | |

| 1 | | that it had vast reserves of "banked" |
|----|---------|---|
| 2 | | water available to provide to its |
| 3 | | customers in the event of a dry year or |
| 4 | | an emergency. <i>Id.</i> at Tables 4-1. |
| 5 | | |
| 6 | | SCVWA repeatedly reported to its |
| 7 | | customers that pumping from the |
| 8 | | Saugus formation was within the normal |
| 9 | | range as projected by its Urban Water |
| 10 | | Management Plans, and that if it were |
| 11 | | necessary, SCVWA could pump more |
| 12 | | than 3 times that production from the |
| 13 | | Saugus formation alone to account for |
| 14 | | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 15 | | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 16 | | Valley Water Report, at Tables 3-1. |
| 17 | | SCVWA offers no explanation as to |
| 18 | | why they would not use one of the other |
| 19 | | 10 wells located in the Saugus |
| 20 | | Formation to pump additional |
| 21 | | groundwater. |
| 22 | | |
| 23 | | This also likely depends on yearly |
| 24 | | demand, for example in 2014, compared |
| 25 | | to 2013, total water use in the Santa |
| 26 | | Clarita Valley in 2014 was almost ten |
| 27 | | percent lower, and it was below the |
| 28 | 2020042 | ' |

| | | | short-term projected water requirement |
|-----|----------|---|---|
| | | | estimated in last year's Annual Water |
| | | | Report. The decrease in demand was |
| | | | more than 10x the purported lost |
| | | | capacity, suggesting SCVWA would not |
| | | | have to make any accommodation to |
| | | | account for the lost production from V- |
| | | | 205. Trowbridge Decl. II, ¶¶ 52, Ex. |
| | | | AU, 2014 Santa Clarita Valley Water |
| | | | Report, at p. 7. |
| | | | |
| 51 | SCV | A hamanamhia | Not disputed |
| 31. | | | Not disputed. |
| | | Deci. ¶ 3. | |
| | into an | | |
| | Environ | | |
| | mental | | |
| | Oversig | | |
| | ht | | |
| | Agreem | | |
| | ent | | |
| | ("EOA" | | |
| |) with | | |
| | DTSC | | |
| | in 2003. | | |
| | | | |
| | 51. | Water entered into an Environ mental Oversig ht Agreem ent ("EOA") with DTSC | Water entered into an Environ mental Oversig ht Agreem ent ("EOA") with DTSC |

27

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| 1 | 52. | Under the EOA, | Abercrombie | Partially disputed to the extent it |
|---------|-----|--------------------|-----------------|-------------------------------------|
| 2 | | DTSC provides | Decl. Ex. A, | only refers to Whittaker. |
| 3 | | oversight of SCV | at 1-2. | |
| 4 | | Water's actions to | | |
| 5 | | respond to | | |
| 6 | | perchlorate | | |
| 7 | | contamination, | | |
| 8 | | caused by the | | |
| 9 | | actions of | | |
| 10 | | Whittaker, in the | | |
| 11 | | vicinity of its | | |
| 12 | | wells. | | |
| 13 | 53. | The purpose of | Abercrombie | Not disputed. |
| 14 | | the EOA is | Decl. Ex. A, at | |
| 15 | | also to ensure | 1. | |
| 16 | | that SCV | | |
| 17 | | Water's | | |
| 18 | | response | | |
| 19 | | actions comply | | |
| 20 21 | | with the | | |
| | | National | | |
| 22 | | Contingency | | |
| 23 | | Plan. | | |
| 24 | | | | |

| 54. | DDW has | Gee Decl. | Not disputed. |
|-----|-------------------|-----------|---------------|
| | determined that | Ex. J, at | |
| | the groundwater | 37:17-21 | |
| | near the | (O'Keefe | |
| | Whittaker Site is | Depo.). | |
| | an "extremely | | |
| | impaired" water | | |
| | source. | | |
| 55. | SCV Water | Gee | Not disputed. |
| | obtains permits | Decl. Ex. | |
| | to use its | M, at | |
| | groundwater as | 38:19- | |
| | a source for | 39:13 | |
| | drinking water | (Alvord | |
| | from DDW. | Depo). | |
| 56. | As part of the | Gee | Not disputed. |
| | permitting | Decl. | |
| | process, DDW | Ex. J, at | |
| | reviews and | 14:21- | |
| | approves any | 17:11 | |
| | proposed | (O'Keef | |
| | treatment | e | |
| | efforts to be | Depo.). | |
| | applied to the | | |
| | water to | | |
| | address any | | |

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| 1 | | contamination. | | |
|----------|-----|-------------------|--------------|---------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 57. | SCV Water's | Gee Decl. | Not disputed. |
| 9 | | permit issued by | Ex. M, at | Not disputed. |
| 10 | | DDW requires | 56:5-59:8, | |
| 11 | | blending water | 136:7-24 | |
| 12 | | from the Saugus | (Alvord | |
| 13 | | Perchlorate | Depo.); Gee | |
| 14 | | Treatment | Decl. Ex. Y, | |
| 15 16 | | Facility | at 6, ¶ 20 | |
| 17 | | ("SPTF") with | (2010 | |
| 18 | | purchased State | Amended | |
| 19 | | Water Project | SPTF Permit | |
| 20 | | water to achieve | No. | |
| 21 | | the operational | 1910048). | |
| 22 | | goal of non- | | |
| 23 | | detectable levels | | |
| 24 | | of VOCs in the | | |
| 25 | | distribution | | |
| 26 | | system. | | |
| 27 | | | | |

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| 1 | 58. | DDW will not | Abercrombie | Not disputed. |
|----------|-----|-------------------|---------------|--|
| 2 | | issue permits for | Decl. ¶¶ 7-9; | |
| 3 | | SCV Water to | Gee Decl. Ex. | |
| 4 | | utilize water | J, at 74:10- | |
| 5 | | from extremely | 80:2 | |
| 6 | | impaired water | (O'Keefe | |
| 7 | | sources until it | Depo.). | |
| 8 | | completes its | | |
| 9 | | evaluation of the | | |
| 10 | | water source | | |
| 11 | | under DDW | | |
| 12 | | policy 97-005. | | |
| 13 | 59. | The 97-005 | RJN Ex. F, at | Disputed that it is intended to be a |
| 14 | | review process | 10. | health base standard. The DDW |
| 15 | | requires the | | requirements under DDW Policy 97-005 |
| 16 17 | | permit applicant | | are not based on DDW's determination |
| 18 | | to "address all | | that SCVWA's well water is unsafe to |
| 19 | | contaminants of | | drink. According to Mr. O'Keefe, the |
| | | health | | 97-005 Policy is not a health based |
| 20 21 | | concern" | | standard, but one based on treatability. |
| 22 | | | | Trowbridge Decl., ¶ 29, Ex. AA, |
| 23 | | | | O'Keefe Depo. at 10:11-18, 84:8-85:6. |
| 24 | | | | The 97-005 Policy uses an equation |
| 25 | | | | called the MCL Equivalent to determine |
| | | | | if additional treatment is necessary |
| 26 27 | | | | before the water can be distributed to |
| 28 | | | | households. Trowbridge Decl., ¶ 31, |

| 1 2 3 4 5 6 | Ex. AC, Process Memo, pp. 13-16; Mr. O'Keefe testified that the equation "is |
|----------------------------|--|
| 3 4 5 | O'Keefe testified that the equation "is |
| 4 5 | |
| 5 | not intended to be a risk assessment at |
| | all It's a treatability assessment." |
| 6 | Trowbridge Decl., ¶ 29, Ex. AA, |
| 11 | O'Keefe Depo. at 89:9-20. This sworn |
| 7 | testimony is consistent with the |
| 8 | September 2020 DDW Process Memo |
| 9 | 97-005 Users Guide ("DDW Users |
| 10 | Guide"). Trowbridge Decl. II, ¶ 61, |
| 11 | Ex. BD. |
| 12 | |
| 13 | In determining whether the MCL |
| 14 | Equivalent is below 1, DDW does not |
| 15 | require any health risk assessment. |
| 16 | Trowbridge Decl., ¶ 29, Ex. AA, |
| 17 | O'Keefe Depo, at 89:9-20. SCVWA |
| 18 | has completed the work necessary to |
| 19 | determine the MCL Equivalent for V- |
| 20 | 201. They have concluded that the |
| 21 | MCL Equivalent score for V-201 is |
| 22 | below 1. Trowbridge Decl., ¶ 6, Ex. D |
| 23 | February 97-005 Report at Executive |
| 24 | Summary – VI. |
| 25 | |
| 26 | According to the DDW Users Guide, |
| 27 | and SCVWA's interpretation of its |
| 28 | |

| | | | obligations, no additional treatment for VOCs is necessary if the score is below 1. SCVWA's consultants have submitted many reports to DDW in which they determined the MCL Equivalent. In each case the number has been below 1. Troubridge Decl. ¶6 |
|-----|------------------|--|---|
| | | | 1. SCVWA's consultants have submitted many reports to DDW in which they determined the MCL Equivalent. In each case the number has |
| | | | submitted many reports to DDW in which they determined the MCL Equivalent. In each case the number has |
| | | | which they determined the MCL Equivalent. In each case the number has |
| | | | Equivalent. In each case the number has |
| | | | 1 |
| | | | boon bolow 1 Trowbridge Deel #6 |
| | | | been below 1. Trowbridge Decl., ¶ 6, |
| | | | Ex. D February 97-005 Report at at 7-1, |
| | | | 7-3. According to their consultant |
| | | | Meredith Durant, "less than 1 is [a] |
| | | | green light" Trowbridge Decl., ¶ |
| | | | 27, Ex. Y, Durant Depo at 32:15. |
| | | | |
| | | | |
| 60. | The 97-005 | RJN Ex. F, at | Disputed that the permit process |
| | review process | 10; | requires the permit application to |
| | requires the | Abercrombie | treat all contaminants. This isc |
| | permit applicant | Decl. ¶¶ 7-8; | considered a goal, and no treatment |
| | to treat all | Alvord Decl. | is required if |
| | contaminants of | ¶ 8. | The VOCs found in the water |
| | health concern | | wells have uniformly been |
| | "down to the | | detected at concentrations below |
| | lowest | | those levels that the Federal and |
| | concentration | | State deem a threat to human |
| 11 | feasible," which | | health or the environment. |
| | "[i]n many | | SCVWA concedes that it is |
| | | | |
| | cases, this may | | unlikely this will change and that |
| | 60. | review process requires the permit applicant to treat all contaminants of health concern "down to the lowest | review process requires the permit applicant to treat all contaminants of health concern "down to the lowest" 10; Abercrombie Decl. ¶¶ 7-8; Alvord Decl. ¶ 8. |

| 1 | turn out to be the | as long as the concentrations stay |
|----|---------------------|---------------------------------------|
| 2 | level of | below these levels that the water |
| 3 | non-detection | is safe to drink. Moreover, in a |
| 4 | (ND) or to the | recent October 2020 internal |
| 5 | detection limit for | SCVWA email, Dirk Marks the |
| 6 | purposes of | Director of Water Resources for |
| 7 | reporting (DLR)." | SCVWA, admitted that regulators |
| 8 | | have "declined to directly order |
| 9 | | [SCVWA] to treat for VOC." |
| 10 | | Trowbridge Decl. II, ¶ 40, Exh. AI, |
| 11 | | Internal Corres. among directors of |
| 12 | | SCVWA, October 14-15, 2020 |
| 13 | | ("10/15/20 V-201 Corres."). |
| 14 | | |
| 15 | | In determining whether the MCL |
| 16 | | Equivalent is below 1, DDW does not |
| 17 | | require any health risk assessment. |
| 18 | | Trowbridge Decl., ¶ 29, Ex. AA, |
| 19 | | O'Keefe Depo, at 89:9-20. SCVWA |
| 20 | | has completed the work necessary to |
| 21 | | determine the MCL Equivalent for V- |
| 22 | | 201. They have concluded that the |
| 23 | | MCL Equivalent score for V-201 is |
| 24 | | below 1. Trowbridge Decl., ¶ 6, Ex. D |
| 25 | | February 97-005 Report at Executive |
| 26 | | Summary – VI. |
| 27 | | |
| 28 | 2020042 | |

| | | | According to the DDW Users Guide, |
|-----|-----------------|----------------|--|
| | | | and SCVWA's interpretation of its |
| | | | obligations, no additional treatment for |
| | | | VOCs is necessary if the score is below |
| | | | 1. SCVWA's consultants have |
| | | | submitted many reports to DDW in |
| | | | which they determined the MCL |
| | | | Equivalent. In each case the number has |
| | | | been below 1. Trowbridge Decl., ¶ 6, |
| | | | Ex. D February 97-005 Report at at 7-1, |
| | | | 7-3. According to their consultant |
| | | | Meredith Durant, "less than 1 is [a] |
| | | | green light" Trowbridge Decl., ¶ |
| | | | 27, Ex. Y, Durant Depo at 32:15. |
| | | | |
| 61. | DDW has | Gee Decl. Ex. | Disputed that it is a condition of |
| | required SCV | Y, at 6, ¶ 20. | the permit. SCVWA considers |
| | Water to treat | | contamination below the MCLs to |
| | VOC | | be safe to drink and admits that up |
| | contamination | | to 10% of the water delivered to |
| | in groundwater | | households contains detectable |
| | pumped from its | | levels of VOCs. Declaration of |
| | Saugus-1 and | | Keith Abercrombie in Support of |
| | Saugus-2 wells | | Partial Summary Judgment, |
| | at the SPTF to | | October 23, 2020 ("Abercrombie |
| 11 | below the DLR | 1 | MSJ Decl.") at ¶¶ 8-9; Alvord |

| 1 | | as a condition in | | 12/12/19 30(b)(6) Depo. at 19:12- |
|--|-----|---|--|-------------------------------------|
| 2 | | its permit to use | | 23; . Deposition of Michael Alvord |
| 3 | | that water as a | | (December 5, 2019)("Alvord |
| 4 | | drinking supply | | Depo.") 30:15-31:14. |
| 5 | | source. | | |
| 6 | | | | In a magant October 2020 internal |
| 7 | | | | In a recent October 2020 internal |
| 8 | | | | SCVWA email, Dirk Marks the |
| 9 | | | | Director of Water Resources for |
| 10 | | | | SCVWA, admitted that regulators |
| 11 | | | | have "declined to directly order |
| 12 | | | | [SCVWA] to treat for VOC." |
| 13 | | | | Trowbridge Decl. II, ¶ 40, Exh. AI, |
| 14 | | | | 10/15/20 V-201 Corres. |
| | | | 4.4 | |
| 15 | 62. | SCV Water | Abercrom | Not disputed. |
| 15 16 | 62. | SCV Water initiated | Abercrom bie Decl. ¶ | Not disputed. |
| | 62. | | | Not disputed. |
| 16 | 62. | initiated | bie Decl. ¶ | Not disputed. |
| 16 17 | 62. | initiated efforts to | bie Decl. ¶ 7; Gee | Not disputed. |
| 16 17 18 | 62. | initiated efforts to acquire a | bie Decl. ¶ 7; Gee Decl. Ex. | Not disputed. |
| 16 17 18 19 | 62. | initiated efforts to acquire a drinking | bie Decl. ¶ 7; Gee Decl. Ex. J, at | Not disputed. |
| 16 17 18 19 20 | 62. | initiated efforts to acquire a drinking water supply | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 | Not disputed. |
| 16 17 18 19 20 21 | 62. | initiated efforts to acquire a drinking water supply permit from | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |
| 16 17 18 19 20 21 22 | 62. | initiated efforts to acquire a drinking water supply permit from DDW for its | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |
| 16 17 18 19 20 21 22 23 | 62. | initiated efforts to acquire a drinking water supply permit from DDW for its V-201 well | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |
| 16 17 18 19 20 21 22 23 24 | 62. | initiated efforts to acquire a drinking water supply permit from DDW for its V-201 well in 2012, | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |
| 16 17 18 19 20 21 22 23 24 25 | 62. | initiated efforts to acquire a drinking water supply permit from DDW for its V-201 well in 2012, under the 97- | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |
| 16 17 18 19 20 21 22 23 24 25 26 | 62. | initiated efforts to acquire a drinking water supply permit from DDW for its V-201 well in 2012, under the 97- 005 review | bie Decl. ¶ 7; Gee Decl. Ex. J, at 71:12-15 (O'Keefe | Not disputed. |

| 1 | 63. | DDW has | Alvord. Decl. | Disputed. |
|--------|-----|------------------|---------------|-------------------------------------|
| 2 | | informed SCV | ¶ 8. | SCVWA's Director of Water |
| 3 | | Water that SCV | | Resources, Dirk Mark, in internal |
| 4 | | Water must | | communications among other |
| 5 | | address VOCs | | directors that from its discussions |
| 6 7 | | detected in V- | | with DDW "the best that I can |
| 8 | | 201 even though | | decern [sic] is that DDW declined |
| 9 | | TCE is currently | | to directly order us to treat for |
| 10 | | detected in that | | VOCtherefore our report |
| 10 | | well at a level | | showing V201 coming on in 2021 |
| 12 | | below the MCL. | | without VOC is a reasonable |
| 13 | | | | assumption for the report." |
| 14 | | | | Directly contradicting Mr. |
| 15 | | | | Alvord's statement, |
| 16 | | | | correspondence between Dirk |
| 17 | | | | Marks, Mr. Alvord himself, Steve |
| 18 | | | | Cole and others re "VOC |
| 19 | | | | Treatment at Well V201," dated |
| 20 | | | | October 15, 2020. In an earlier e- |
| 21 | | | | mail from the same thread, Mike |
| 22 | | | | Alvord stated "We do not have an |
| 23 | | | | inherent VOC issue in any of our |
| 24 | | | | wells. What we are faced with in 4 |
| 25 | | | | Saugus (Saugus 1, Saugus 2, 201, |
| 26 | | | | and 205) wells is low levels of |
| 27 | | | | VOCs and the DDW 97-005 |
| 28 | | | | |

| 1 | | | | process, which is for "extremely |
|----|-----|----------------|---------------|--|
| 2 | | | | impaired sources with multiple |
| 3 | | | | contaminantsSaugus 1 & |
| 4 | | | | 2there are detections of VOCs |
| 5 | | | | above the DLR but below the |
| 6 | | | | MCL. In the permit, DDW states |
| 7 | | | | we have an "operational goal" of |
| 8 | | | | <dlr, accomplish="" most<="" td="" this="" we=""></dlr,> |
| 9 | | | | of the time through blending with |
| 10 | | | | import water in the treated water |
| 11 | | | | pipeline. However, there are times |
| 12 | | | | where we have detections of |
| 13 | | | | VOCS (again <mcl) in="" of<="" some="" td=""></mcl)> |
| 14 | | | | our turnouts" Trowbridge Decl. |
| 15 | | | | II, ¶ 40, Exh. AI, 10/15/20 V-201 |
| 16 | | | | Corres. |
| 17 | 64. | DDW has not | Abercrombie | Not disputed. |
| 18 | | yet issued a | Decl. ¶ 9; | - |
| 19 | | drinking water | Alvord Decl. | |
| 20 | | supply permit | ¶¶ 8-9; Gee | |
| 21 | | for the V-201 | Decl. Ex. J, | |
| 22 | | well. | at 76:23-77:5 | |
| 23 | | | (O'Keefe | |
| 24 | | | Depo.). | |
| 25 | | | 1 | |

| 65. | DDW has stated | Gee Decl. | Disputed. O'Keefe testified he |
|-----|--------------------|----------------|------------------------------------|
| | that SCV Water | Ex. J, at | was not involved in the day to day |
| | will likely have | 38:10-39:5 | review and needs more |
| | to follow the 97- | (O'Keefe | information. O'Keefe testified in |
| | 005 review | Depo.). | response to a question about |
| | process when it | | whether V-205 would not be |
| | seeks a permit for | | subject to the 97-005 Process: "I |
| | its V-205 well. | | think that remains to be seen." |
| | | | Gee Decl. Ex. J, 76:3-15. |
| 66. | SCV Water | Abercrom | Not disputed. |
| | currently operates | bie Decl. ¶ | |
| | its V- 201 well in | 9; Gee | |
| | order to contain | Decl. Ex. | |
| | the spread of | H, at | |
| | perchlorate | 38:17- | |
| | contamination. | 39:4 | |
| | | (Amini | |
| | | Depo.); | |
| | | Zelikson Decl. | |
| | | ¶ 4. | |

| 67. | Because SCV | Abercrom | Not disputed. |
|-----|-------------------|----------------|---------------------------------------|
| | Water does not | bie Decl. ¶ | |
| | yet have a | 9; Gee | |
| | drinking water | Decl. Ex. | |
| | supply permit for | AF (2018 | |
| | V-201 well | SCV | |
| | water, it | Water | |
| | discharges that | Notice | |
| | pumped water as | of | |
| | waste to the | NPDE | |
| | Santa Clarita | S | |
| | River. | Violati | |
| | | on). | |
| 68. | In order to | Abercrombie | Disputed as to the extent the water |
| | comply with its | Decl. ¶¶ 6, 9. | is considered "waste water." |
| | National | | SCVWA disclosed to its customers |
| | Pollutant | | that the blending is required to deal |
| | Discharge | | with TDS and Sulfates, not VOCs, |
| | Elimination | | and that the water would be safe to |
| | System | | drink. Trowbridge Decl., Ex. W, |
| | ("NPDES") | | V-201 Information Sheet. |
| | permit | | |
| | contamination | | |
| | limitations, SCV | | |
| | Water blends | | |
| | waste water | | |
| | from V- 201 | | |

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|---------------------------|------------|---|----------------|------|
| | ID #:21703 | 3 | | |

| | | T | | |
|----|-----|-----------------|---------------|---------------|
| 1 | | with imported | | |
| 2 | | State Water | | |
| 3 | | Project Water | | |
| 4 | | when discharged | | |
| 5 | | to the Santa | | |
| 6 | | Clarita River. | | |
| 7 | | | | |
| 8 | | C CY I Y I | | |
| 9 | 69. | SCV Water | Abercrombie | Not disputed. |
| 10 | | has | Decl. ¶¶ 8-9. | |
| 11 | | incurred | | |
| 12 | | costs | | |
| 13 | | related to | | |
| 14 | | technical | | |
| 15 | | reports and | | |
| 16 | | investigatio | | |
| | | ns by | | |
| 17 | | consultants | | |
| 18 | | related to | | |
| 19 | | VOC | | |
| 20 | | contaminati | | |
| 21 | | on. | | |
| 22 | | | | |

SCVWA has failed to establish Response Costs are Consistent with the NCP, and Certainly has not Establish the pre-requisites governing a "time critical removal action," much less a removal action.

Disputed.

| 70. | SCV Water |
|-----|-------------------|
| | works with |
| | DDW to provide |
| | for robust public |
| | notice and |
| | participation as |
| | to its water |
| | quality, permit |
| | status and water |
| | treatment. |

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| Abercr |
|---------|
| ombie |
| Decl. ¶ |
| 10; |
| Alvord |
| Decl. ¶ |
| 6. |

It is abundantly clear from Plaintiff's Annual Reports that Plaintiff has failed to comply with the public participation requirements imposed by the NCP, in fact, their Trowbridge Decl. II, ¶¶ 52-57, Ex. AU, 2014 Santa Clarita Valley Water Report, at ES6, Ex AV, 2015 Santa Clarita Valley Water Report, at ES-6; Ex. AW 2016 Santa Clarita Valley Water Report, at ES-5; Ex. AX 2017 Santa Clarita Valley Water Report, at ES-5; Ex. AY 2018 Santa Clarita Valley Water Report, at ES-5, Ex. AZ 2019 Santa Clarita Valley Water Report, at ES-2.

| 1 | 71. | SCV Water | Gee Decl. Ex. | Not disputed. |
|----------|---------|------------------|---------------|-------------------------------------|
| 2 | | provided notice | AD (Jan. 22, | |
| 3 | | to DDW when | 2018 SCV | |
| 4 | | its V-201 and | Water letter | |
| 5 | | V-205 wells | to State | |
| 6 | | became | Water | |
| 7 | | impacted with | Resource | |
| 8 | | perchlorate and | Control | |
| 9 | | were taken out | Board); Gee | |
| 10 | | of service (i.e. | Decl. Ex. W | |
| 11 | | changed to | (Dec. 7, 2010 | |
| 12 | | "inactive"). | Email | |
| 13 | | | Corresp.). | |
| 14 | 72. | SCV Water | Alvord Decl. | Disputed in part. Ex. B to the |
| 15 | | provides | 6, Ex. B. | Alvord declaration is a single |
| 16 | | notice to the | | notice, and does not demonstrate |
| 17 | | public when | | that SCVWA consistently provides |
| 18 | | its wells | | notice to the public when its wells |
| 19 | | become | | are "impacted" by contaminants. |
| 20 | | impacted with | | Disputed that SCVWA held public |
| 21 | | contaminants. | | comment periods with respect to |
| 22 23 | | | | VOC contamination or its |
| | | | | purchases. Plaintiff's Annual |
| 24 | | | | Water Reports issued to its |
| 25 | | | | customers clearly demonstrate they |
| 26 | | | | have not performed such public |
| 27 28 | | | | participation. |
| ۷۵ | 2930843 | | | |

| 1 | | Trowbridge Decl. II, ¶¶ 52-57, Ex. |
|----|---------|------------------------------------|
| 2 | | AU, 2014 Santa Clarita Valley |
| 3 | | Water Report, at ES6, Ex AV, |
| 4 | | 2015 Santa Clarita Valley Water |
| 5 | | Report, at ES-6; Ex. AW 2016 |
| 6 | | Santa Clarita Valley Water |
| 7 | | Report, at ES-5; Ex. AX 2017 |
| 8 | | Santa Clarita Valley Water |
| 9 | | Report, at ES-5; Ex. AY 2018 |
| 10 | | Santa Clarita Valley Water Report, |
| 11 | | at ES-5, Ex. AZ 2019 Santa Clarita |
| 12 | | Valley Water Report, at ES-2. The |
| 13 | | lack of any such notice and public |
| 14 | | comment period on the Castaic |
| 15 | | Lake Water Agency – Whittaker |
| 16 | | Off-Site Groundwater |
| 17 | | Contamination Page (60000168) |
| 18 | | further demonstrates SCVWA's |
| 19 | | failure to comply with the public |
| 20 | | participation requirements under |
| 21 | | the NCP. Castaic Lake Water |
| 22 | | Agency – Whittaker –Off-Site |
| 23 | | Groundwater Contamination, Site |
| 24 | | No. 60000168; |
| 25 | | https://www.envirostor.dtsc.ca.gov |
| 26 | | /public/profile_report?global_id=6 |
| 27 | | 0000168, lasted visited, December |
| 28 | 2930843 | |

| 1 | | | | 14, 2020. |
|----|---------|--------------------|-------------|---------------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | 73. | SCV Water | Gee Decl. | Disputed. Ex. Z says nothing about |
| 10 | | provides notice to | Ex. Z (June | replacement water or the State |
| 11 | | DDW and any | 9, 2011 | Water Project. In fact, SCVWA |
| 12 | | impacted member | CLWA | actually informed their customers |
| 13 | | of the public | Press | the opposite, "The closing of this |
| 14 | | when it purchases | Release). | well will not impact the Santa |
| 15 | | replacement | | Clarita Valley Family of Water |
| 16 | | water from the | | Suppliers' ability to adequately |
| 17 | | State Water | | provide water to our customers |
| 18 | | Project. | | and will not have a negative |
| 19 | | | | impact on the Valley's water |
| 20 | | | | supply." (emphasis added). Gee |
| 21 | | | | Decl. Ex. Z. |
| 22 | | | | |
| 23 | | | | |
| 24 | | | | Even if this particular release |
| 25 | | | | indicated SCVWA purchased |
| 26 | | | | replacement water, a single press |
| 27 | | | | release is not sufficient to evidence |
| 28 | | | | a patter. Disputed that SCVWA |
| | 2930843 | | | |

| 1 | | always provides notice to DDW |
|----|--|-------------------------------------|
| 2 | | and any impacted member of the |
| 3 | | public. This single press release |
| 4 | | does not demonstrate that SCVWA |
| 5 | | consistently provides notice to the |
| 6 | | public when its wells are |
| 7 | | "impacted" by contaminants. |
| 8 | | Disputed that SCVWA held public |
| 9 | | comment periods with respect to |
| 10 | | VOC contamination or its |
| 11 | | purchases. Plaintiff's Annual |
| 12 | | Water Reports issued to its |
| 13 | | customers clearly demonstrate they |
| 14 | | did not informed their customers of |
| 15 | | any emergency water purchase to |
| 16 | | replace lost supply from V-201 or |
| 17 | | V-205. Trowbridge Decl. II, ¶¶ |
| 18 | | 52-57, Ex. AU, 2014 Santa Clarita |
| 19 | | Valley Water Report, at ES6, Ex |
| 20 | | AV, 2015 Santa Clarita Valley |
| 21 | | Water Report, at ES-6; Ex. AW |
| 22 | | 2016 Santa Clarita Valley Water |
| 23 | | Report, at ES-5; Ex. AX 2017 |
| 24 | | Santa Clarita Valley Water |
| 25 | | Report, at ES-5; Ex. AY 2018 |
| 26 | | Santa Clarita Valley Water Report, |
| 27 | | at ES-5, Ex. AZ 2019 Santa Clarita |
| 28 | | |

| 1 | | | | Valley Water Report, at ES-2. The |
|----|-----|-------------------|-------------|--------------------------------------|
| 2 | | | | lack of any such notice and public |
| 3 | | | | comment period on the Castaic |
| 4 | | | | Lake Water Agency – Whittaker |
| 5 | | | | Off-Site Groundwater |
| 6 | | | | Contamination Page (60000168) |
| 7 | | | | further demonstrates SCVWA's |
| 8 | | | | failure to comply with the public |
| 9 | | | | participation requirements under |
| 10 | | | | the NCP. Castaic Lake Water |
| 11 | | | | Agency – Whittaker –Off-Site |
| 12 | | | | Groundwater Contamination, Site |
| 13 | | | | No. 60000168; |
| 14 | | | | https://www.envirostor.dtsc.ca.gov |
| 15 | | | | /public/profile report?global id=6 |
| 16 | | | | 0000168, lasted visited, December |
| 17 | | | | 14, 2020. |
| 18 | 74. | Purchasing | Abercrombie | Disputed as the cited evidence does |
| 19 | | replacement water | Decl. ¶ 3. | not reflect the facts cited. As |
| 20 | | from | | Plaintiff frequently reports to its |
| 21 | | the State | | customers, of the total water served |
| 22 | | Water Project | | to its customers, more than half of |
| 23 | | generally | | it is from the SWP every year. |
| 24 | | does not | | Trowbridge Decl. II, ¶¶ 52-57, Ex. |
| 25 | | affect SCV | | AU, 2014 Santa Clarita Valley |
| 26 | | Water's | | Water Report, at ES6, Ex AV, |
| 27 | | citizens | | 2015 Santa Clarita Valley Water |
| 28 | | | | |

| 1 | | because SWP | | Report, at ES-6; Ex. AW 2016 |
|----------|-----|----------------|--------------|--|
| 2 | | water has less | | Santa Clarita Valley Water |
| 3 | | contaminants | | Report, at ES-5; Ex. AX 2017 |
| 4 | | than | | Santa Clarita Valley Water |
| 5 | | groundwater | | Report, at ES-5; Ex. AY 2018 |
| 6 | | pumped from | | Santa Clarita Valley Water Report, |
| 7 | | SCV Water's | | at ES-5, Ex. AZ 2019 Santa Clarita |
| 8 | | Saugus | | Valley Water Report, at ES-2. |
| 9 | | Formation | | |
| 10 | | wells. | | To 1: -1.4 - f. 41 - f4 41 -4 14 :- |
| 11 | | | | In light of the fact that groundwater is |
| 12 | | | | blended with the State Water Project |
| 13 | | | | water before it is served to its |
| 14 | | | | customers, this statement is baseless |
| 15 | | | | and non-sensical. Gee Decl. Ex. Y, at |
| | | | | 6, ¶ 20 (2010 Amended SPTF Permit |
| 16 17 | | | | No. 1910048). |
| 18 | 75. | Before DDW | Alvord Decl. | Not disputed. |
| 19 | | issues a | ¶ 10; Gee | |
| 20 | | permit to | Decl. Ex. J, | |
| 21 | | SCV Water | at 77:24- | |
| 22 | | to allow a | 78:14 | |
| 23 | | well to be | (O'Keefe | |
| 24 | | used for | Depo.); Gee | |
| 25 | | drinking | Decl. Ex. X | |
| 26 | | water, DDW | (Cal. Dept. | |
| 27 | | requires and | of Pub. | |
| 28 | | 1 | ı | |

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| 1 | | facilitates a | Health | |
|----|-----|------------------|----------------|-------------------------|
| 2 | | "public | Notice of | |
| 3 | | comment" | Pub.). | |
| 4 | | period. | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | 76. | SCV Water | Gee Decl. Ex. | Not disputed. |
| 10 | | participates in | I, at 14:25- | |
| 11 | | monthly | 16:14 | |
| 12 | | technical | (Simpson | |
| 13 | | meetings, as | Depo.); | |
| 14 | | required under | Alvord Decl. | |
| 15 | | the 2007 | ¶¶ 6-7, Ex. C. | |
| 16 | | Settlement | | |
| 17 | | Agreement | | |
| 18 | | between the | | |
| 19 | | parties. | | |
| 20 | 77. | The monthly | Gee Decl. Ex. | Generally not disputed. |
| 21 | | technical | I, at 14:25- | |
| 22 | | meetings are | 16:14 | |
| 23 | | also attended by | (Simpson | |
| 24 | | representatives | Depo.); | |
| 25 | | from Whittaker, | Alvord Decl. | |
| 26 | | DTSC, the | 7; | |
| 27 | | Regional Water | Abercrombie | |
| 28 | | ı | ı | |

| 1 | | Quality Control | Decl. ¶ 10. | |
|----|-----|--------------------|---------------|---|
| 2 | | Board, and | | |
| 3 | | DDW. | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | 78. | Information | Gee Decl. Ex. | Disputed that 2 agendas from 2011 |
| 10 | | concerning the | I, at 14:25- | and 2014 demonstrate that well V-201, |
| 11 | | progress of SCV | 16:14 | and the 97-005 permitting processes |
| 12 | | Water's | (Simpson | establish that they are "regular topics |
| 13 | | permitting efforts | Depo.); Gee | of monthly technical meetings." Gee |
| 14 | | with DDW for | Decl. | Decl. Ex. AA (Sept. 13, 2011 and |
| 15 | | well V-201, | Ex. AA (Sept. | March 5, 2014 Technical Meeting |
| 16 | | including the 97- | 13, 2011 and | Agendas). |
| 17 | | 005 process, are | March | |
| 18 | | regular topics at | 5, 2014 | |
| 19 | | the monthly | Techni | Further, Whittaker is informed and |
| 20 | | technical | cal | believes the meetings are not |
| 21 | | meetings. | Meetin | ongoing. |
| 22 | | | g | |
| 23 | | | Agenda | |
| 24 | | | s). | |
| 25 | | | 5). | |
| ۷3 | | | | |

| 1 | 79. | The presence of | Zelikson | Disputed. Plaintiff offers a vague |
|----|-----|--------------------|-----------|-------------------------------------|
| 2 | | hazardous | Decl. Ex. | description of a hearsay statement |
| 3 | | substances in | A, at 32 | in Plaintiff's Expert Report to |
| 4 | | SCV Water's | (Zelikson | assert the presence of hazardous |
| 5 | | wells has been | Report). | substances "has been well |
| 6 | | documented in its | | documented." It does not refer to |
| 7 | | publicly available | | hazardous substances at all, but |
| 8 | | annual water | | vaguely states documents available |
| 9 | | quality report and | | from SCVWA's website "keep the |
| 10 | | press releases. | | public informed on the "response |
| 11 | | | | acitvities conducted by and on |
| 12 | | | | behalf of SCV Water including |
| 13 | | | | when and why groundwater supply |
| 14 | | | | wells are removed from service |
| 15 | | | | and the status of their treatment." |
| 16 | | | | Zelikson Decl. Ex. A, at 32-33. |
| 17 | | | | This statement is contradicted as |
| 18 | | | | Plaintiff's Annual Reports only |
| 19 | | | | advise the public as to its usual |
| 20 | | | | allocation of State Water and the |
| 21 | | | | amount of its use, there is no |
| 22 | | | | reference to emergency purchases |
| 23 | | | | of replacement water as suggested |
| 24 | | | | by SCVWA. |
| 25 | | | | |
| 26 | | | | |
| 27 | | | | |

| 1 | 80. | SCV Water has |
|----|-----|---------------------|
| 2 | | been required to |
| 3 | | purchase water |
| 4 | | from the State |
| 5 | | Water Project on |
| 6 | | an emergency |
| 7 | | basis and could |
| 8 | | not reasonably |
| 9 | | wait 6 months or |
| 10 | | more to respond |
| 11 | | to the shut-down |
| 12 | | of its wells due to |
| 13 | | contamination. |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
| | | |

| Abercrom |
|--------------|
| bie Decl. ¶ |
| 3; Gee |
| Decl. Ex. |
| N, at 51:7- |
| 52:23, |
| 150:14-151:8 |
| (Mesard |
| Depo.). |
| |

This is a legal conclusion, not a fact.

Disputed. In fact, SCVWA actually informed their customers the opposite, "The closing of this well will not impact the Santa Clarita Valley Family of Water Suppliers' ability to adequately provide water to our customers and will not have a negative impact on the Valley's water supply." (emphasis added). Gee Decl. Ex. Z.

SCVWA has provided no evidence to suggest it was required to purchase water from the State Water Project on an emergency basis. SCVWA's Urban Water Management Plan prescribes specific uses of water and breakdowns between the pumped water, and purchased water, both in order to ensure the groundwater sources remain sustainable by preventing over pumping. Plaintiff has consistently pumped, and reported to its customers, that the

2930843

| 1 | pumping capacity in the Saugus |
|----|---|
| 2 | Formation is well within the normal |
| 3 | prescribed pumping range. In its 2014- |
| 4 | 2019 annual reports, despite V-201 and |
| 5 | V-205 wells being out of service in |
| 6 | various years, SCVWA reported to its |
| 7 | customers it maintained sufficient |
| 8 | pumping capacity in the Saugus |
| 9 | formation to meet the planned normal |
| 10 | range ² of pumping as described in the |
| 11 | 2010 Urban Water Management Plan. It |
| 12 | also reported that in dry years, it could |
| 13 | pump up to three times that amount |
| 14 | from the Saugus Formation for a |
| 15 | maximum of three years in order to |
| 16 | maintain the sustainability of the |
| 17 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 18 | Ex. AU, 2014 Santa Clarita Valley |
| 19 | Water Report, at ES6, Ex AV, 2015 |
| 20 | Santa Clarita Valley Water Report, at |
| 21 | ES-6; Ex. AW 2016 Santa Clarita |
| 22 | Valley Water Report, at ES-5; Ex. AX |
| 23 | 2017 Santa Clarita Valley Water |
| 24 | Report, at ES-5; Ex. AY 2018 Santa |
| 25 | Clarita Valley Water Report, at ES-5, |
| 26 | |

² To comply with its Urban Water Management Plans and to ensure the Saugus Aquifer remains sustainable, as groundwater elevations are generally decreasing.

| 1 | Ex. AZ 2019 Santa Clarita Valley Water |
|----|---|
| 2 | Report, at ES-2. Each and every year of |
| 3 | the available reports on SCVWA's |
| 4 | website state that Saugus Formation |
| 5 | pumping has been over the average |
| 6 | amount pumped from the Saugus |
| 7 | Formation since 1980. <i>Id.</i> It also stated |
| 8 | that it had vast reserves of "banked" |
| 9 | water available to provide to its |
| 10 | customers in the event of a dry year or |
| 11 | an emergency. <i>Id.</i> at Tables 4-1. |
| 12 | |
| 13 | SCVWA repeatedly reported to its |
| 14 | customers that pumping from the |
| 15 | Saugus formation was within the normal |
| 16 | range as projected by its Urban Water |
| 17 | Management Plans, and that if it were |
| 18 | necessary, SCVWA could pump more |
| 19 | than 3 times that production from the |
| 20 | Saugus formation alone to account for |
| 21 | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 22 | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 23 | Valley Water Report, at Tables 3-1. |
| 24 | SCVWA offers no explanation as to |
| 25 | why they would not use one of the other |
| 26 | 10 wells located in the Saugus |
| 27 | |

| | | | Formation to pump additional |
|---------|------------------|----------------|--|
| | | | groundwater. |
| | | | |
| | | | This also likely depends on yearly |
| | | | demand, for example in 2014, compared |
| | | | to 2013, total water use in the Santa |
| | | | Clarita Valley in 2014 was almost ten |
| | | | percent lower, and it was below the |
| | | | short-term projected water requirement |
| | | | estimated in last year's Annual Water |
| | | | Report. The decrease in demand was |
| | | | more than 10x the purported lost |
| | | | capacity, suggesting SCVWA would not |
| | | | have to make any accommodation to |
| | | | account for the lost production from V- |
| | | | 205. Trowbridge Decl. II, ¶¶ 52, Ex. |
| | | | AU, 2014 Santa Clarita Valley Water |
| | | | Report, at p. 7. |
| | | | |
| 81. | Purchasing | Gee Decl. | Disputed. The cited testimony |
| | replacement | Ex. N, at | does not state "hiring consultants |
| | water due to the | 51:7- 52:23, | to perform an EE/CA is a non-time |
| | shut-down of | 145:25- | critical removal action." |
| | drinking water | 146:20 | Disputed. In fact, SCVWA |
| | well V-201 is a | (Mesard | actually informed their customers |
| | time critical | Depo.); | the opposite, " The closing of this |
| | removal action. | Zelikson Decl. | opposite, and crossing of vino |
| 2930843 | 1 | 1 | |

| 1 | ¶ 3. | well will not impact the Santa |
|----|----------|--|
| 2 | | Clarita Valley Family of Water |
| 3 | | Suppliers' ability to adequately |
| 4 | | provide water to our customers |
| 5 | | and will not have a negative |
| 6 | | impact on the Valley's water |
| 7 | | supply." (emphasis added). Gee |
| 8 | | Decl. Ex. Z. |
| 9 | | SCVWA has provided no evidence to |
| 10 | | suggest it was required to purchase |
| 11 | | water from the State Water Project on an |
| 12 | | emergency basis. SCVWA's Urban |
| 13 | | Water Management Plan prescribes |
| 14 | | specific uses of water and breakdowns |
| 15 | | between the pumped water, and |
| 16 | | purchased water, both in order to ensure |
| 17 | | the groundwater sources remain |
| 18 | | sustainable by preventing over pumping. |
| 19 | | Plaintiff has consistently pumped, and |
| 20 | | reported to its customers, that the |
| 21 | | pumping capacity in the Saugus |
| 22 | | Formation is well within the normal |
| 23 | | prescribed pumping range. In its 2014- |
| 24 | | 2019 annual reports, despite V-201 and |
| 25 | | V-205 wells being out of service in |
| 26 | | various years, SCVWA reported to its |
| 27 | | customers it maintained sufficient |
| 28 | <u>_</u> | |

| 1 | pumping capacity in the Saugus |
|----|---|
| 2 | formation to meet the planned normal |
| 3 | range ³ of pumping as described in the |
| 4 | 2010 Urban Water Management Plan. It |
| 5 | also reported that in dry years, it could |
| 6 | pump up to three times that amount |
| 7 | from the Saugus Formation for a |
| 8 | maximum of three years in order to |
| 9 | maintain the sustainability of the |
| 10 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 11 | Ex. AU, 2014 Santa Clarita Valley |
| 12 | Water Report, at ES6, Ex AV, 2015 |
| 13 | Santa Clarita Valley Water Report, at |
| 14 | ES-6; Ex. AW 2016 Santa Clarita |
| 15 | Valley Water Report, at ES-5; Ex. AX |
| 16 | 2017 Santa Clarita Valley Water |
| 17 | Report, at ES-5; Ex. AY 2018 Santa |
| 18 | Clarita Valley Water Report, at ES-5, |
| 19 | Ex. AZ 2019 Santa Clarita Valley Water |
| 20 | Report, at ES-2. Each and every year of |
| 21 | the available reports on SCVWA's |
| 22 | website state that Saugus Formation |
| 23 | pumping has been over the average |
| 24 | amount pumped from the Saugus |
| 25 | Formation since 1980. <i>Id.</i> It also stated |
| 26 | |

³ To comply with its Urban Water Management Plans and to ensure the Saugus Aquifer remains sustainable, as groundwater elevations are generally decreasing.

| 1 | | that it had vast reserves of "banked" |
|----|---------|---|
| 2 | | water available to provide to its |
| 3 | | customers in the event of a dry year or |
| 4 | | an emergency. <i>Id.</i> at Tables 4-1. |
| 5 | | |
| 6 | | SCVWA repeatedly reported to its |
| 7 | | customers that pumping from the |
| 8 | | Saugus formation was within the normal |
| 9 | | range as projected by its Urban Water |
| 10 | | Management Plans, and that if it were |
| 11 | | necessary, SCVWA could pump more |
| 12 | | than 3 times that production from the |
| 13 | | Saugus formation alone to account for |
| 14 | | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 15 | | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 16 | | Valley Water Report, at Tables 3-1. |
| 17 | | SCVWA offers no explanation as to |
| 18 | | why they would not use one of the other |
| 19 | | 10 wells located in the Saugus |
| 20 | | Formation to pump additional |
| 21 | | groundwater. |
| 22 | | |
| 23 | | This also likely depends on yearly |
| 24 | | demand, for example in 2014, compared |
| 25 | | to 2013, total water use in the Santa |
| 26 | | Clarita Valley in 2014 was almost ten |
| 27 | | percent lower, and it was below the |
| 28 | 2930843 | |

| 1 | short-term projected water requirement |
|----|--|
| 2 | estimated in last year's Annual Water |
| 3 | Report. The decrease in demand was |
| 4 | more than 10x the purported lost |
| 5 | capacity, suggesting SCVWA would not |
| 6 | have to make any accommodation to |
| 7 | account for the lost production from V- |
| 8 | 205. Trowbridge Decl. II, ¶¶ 52, Ex. |
| 9 | AU, 2014 Santa Clarita Valley Water |
| 10 | Report, at p. 7. |
| 11 | |
| 12 | |
| 13 | |
| 14 | SCVWA has provided no evidence to |
| 15 | suggest it was required to purchase |
| 16 | water from the State Water Project on an |
| 17 | emergency basis. SCVWA's Urban |
| 18 | Water Management Plan prescribes |
| 19 | specific uses of water and breakdowns |
| 20 | between the pumped water, and |
| | purchased water, both in order to ensure |
| 21 | the groundwater sources remain |
| 22 | sustainable by preventing over pumping. |
| 23 | Plaintiff has consistently pumped, and |
| 24 | reported to its customers, that the |
| 25 | pumping capacity in the Saugus |
| 26 | Formation is well within the normal |
| 27 | prescribed pumping range. In its 2014- |
| 28 | presenteed pumping range. In its 2014 |

| 1 | 2019 annual reports, despite V-201 and |
|----|---|
| 2 | V-205 wells being out of service in |
| 3 | various years, SCVWA reported to its |
| 4 | customers it maintained sufficient |
| 5 | pumping capacity in the Saugus |
| 6 | formation to meet the planned normal |
| 7 | range ⁴ of pumping as described in the |
| 8 | 2010 Urban Water Management Plan. It |
| 9 | also reported that in dry years, it could |
| 10 | pump up to three times that amount |
| 11 | from the Saugus Formation for a |
| 12 | maximum of three years in order to |
| 13 | maintain the sustainability of the |
| 14 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 15 | Ex. AU, 2014 Santa Clarita Valley |
| 16 | Water Report, at ES6, Ex AV, 2015 |
| 17 | Santa Clarita Valley Water Report, at |
| 18 | ES-6; Ex. AW 2016 Santa Clarita |
| 19 | Valley Water Report, at ES-5; Ex. AX |
| 20 | 2017 Santa Clarita Valley Water |
| 21 | Report, at ES-5; Ex. AY 2018 Santa |
| 22 | Clarita Valley Water Report, at ES-5, |
| 23 | Ex. AZ 2019 Santa Clarita Valley Water |
| 24 | Report, at ES-2. Each and every year of |
| 25 | the available reports on SCVWA's |
| 26 | <u> </u> |

⁴ To comply with its Urban Water Management Plans and to ensure the Saugus Aquifer remains sustainable, as groundwater elevations are generally decreasing.

| 1 | website state that Saugus Formation |
|----|--|
| 2 | pumping has been over the average |
| 3 | amount pumped from the Saugus |
| 4 | Formation since 1980. <i>Id</i> . It also stated |
| 5 | that it had vast reserves of "banked" |
| 6 | water available to provide to its |
| 7 | customers in the event of a dry year or |
| 8 | an emergency. <i>Id.</i> at Tables 4-1. |
| 9 | |
| 10 | SCVWA repeatedly reported to its |
| 11 | customers that pumping from the |
| 12 | Saugus formation was within the normal |
| 13 | range as projected by its Urban Water |
| 14 | Management Plans, and that if it were |
| 15 | necessary, SCVWA could pump more |
| 16 | than 3 times that production from the |
| 17 | Saugus formation alone to account for |
| 18 | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 19 | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 20 | Valley Water Report, at Tables 3-1. |
| 21 | SCVWA offers no explanation as to |
| 22 | why they would not use one of the other |
| 23 | 10 wells located in the Saugus |
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| 25 | groundwater. |
| 26 | |
| 27 | |
| | |

| 1 | | | | This also likely depends on yearly |
|----|-----|----------------|----------|---|
| 2 | | | | demand, for example in 2014, compared |
| 3 | | | | to 2013, total water use in the Santa |
| 4 | | | | Clarita Valley in 2014 was almost ten |
| 5 | | | | percent lower, and it was below the |
| 6 | | | | short-term projected water requirement |
| 7 | | | | estimated in last year's Annual Water |
| 8 | | | | Report. The decrease in demand was |
| 9 | | | | more than 10x the purported lost |
| 10 | | | | capacity, suggesting SCVWA would not |
| 11 | | | | have to make any accommodation to |
| 12 | | | | account for the lost production from V- |
| 13 | | | | 205. Trowbridge Decl. II, ¶¶ 52, Ex. |
| 14 | | | | AU, 2014 Santa Clarita Valley Water |
| 15 | | | | Report, at p. 7. |
| 16 | 82. | Hiring | Gee | Disputed. The cited testimony |
| 17 | | consultants to | Decl. | does not state "hiring consultants |
| 18 | | perform an | Ex. N, | to perform an EE/CA is a non-time |
| 19 | | EE/CA is a | at 51:7- | critical removal action." |
| 20 | | non-time | 52:23, | Further, while Plaintiff con |
| 21 | | critical | (Mesar | |
| 22 | | removal | d | |
| 23 | | action. | Depo.). | This constitutes a legal conclusion, |
| 24 | | | | not a fact. |
| 25 | | | | _ |

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| | installing | Decl. Ex. | local conclusion |
|-----|---|-----------------|-------------------|
| | | Been Em | legal conclusion. |
| | wellhead | A, at 31 | |
| | treatment to | (Zelikson | |
| | address | Report). | |
| | contamination | | |
| | are non-time | | |
| | critical removal | | |
| | action. | | |
| 84. | SCV Water has | Abercrombie | Not disputed. |
| | had to take its | Decl. ¶ 5; Gee | |
| | wells V-201 and V-205 out of service due to the spread of perchlorate | Decl. Ex. W | |
| | | (Dec. 7, 2010 | |
| | | Email | |
| | | Corresp.); Gee | |
| | | Decl. Ex. AD | |
| | contamination. | (Jan. 22, 2018 | |
| | | SCV Water | |
| | | letter to State | |
| | | Water | |
| | | Resource | |
| | | Control | |
| | | Board) | |

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| 1 85. 2 3 4 5 6 7 8 9 | In 2015, the Parties entered a settlement agreement to install perchlorate treatment at well V-201. | Abercrombie Decl. ¶ 6. | Not disputed. |
|---|---|------------------------|---------------|
| 10 86. 11 12 13 14 15 16 17 18 19 20 21 22 | Well water from V-201 must be discharged to the Santa Clara River in order to contain the spread of perchlorate because DDW has not issued a drinking water supply permit for the well. | Abercrombie Decl. ¶ 6. | Not disputed. |

| 1 | 87. | SCV Water | Abercrombie | Not disputed that SCVWA was |
|----|-----|--------------------|----------------|-------------------------------------|
| 2 | | incurred blend | Decl. ¶¶ 6, 9. | required to purchase water to blend |
| 3 | | water response | | with water from V-201 to meet the |
| 4 | | costs because it | | water quality specifications for |
| 5 | | must blend water | | Total Dissolved Solids and |
| 6 | | from V-201 with | | Sulfates in its NPDES permit. |
| 7 | | purchased | | Disputed to the extent Plaintiff |
| 8 | | imported State | | contends VOCs required the |
| 9 | | Water Project | | purchase of blend water for well |
| 10 | | water in order to | | V-201. |
| 11 | | comply with the | | |
| 12 | | water quality | | |
| 13 | | specifications for | | |
| 14 | | Total Dissolved | | |
| 15 | | Solids and | | |
| 16 | | Sulfates in its | | |
| 17 | | NPDES permit. | | |
| 18 | 88. | SCV Water has | Abercrombie | Not disputed. |
| 19 | | expended | Decl. ¶ 9. | Not disputed. |
| 20 | | | | |
| 21 | | \$1,989,991 for | | |
| 22 | | blend water at the | | |
| 23 | | V- 201 well as of | | |
| 24 | | June 30, 2020. | | |
| 25 | | | | |
| 26 | | | | |

| 1 | 89. | SCV Water is | Abercrombi | Disputed. While the stated assertion is |
|----|-----|-----------------|--------------|--|
| 2 | | in the process | e Decl. ¶ 7; | vague as to "address" all contaminants |
| 3 | | of seeking a | RJN, Ex. F, | that exceed the detection level, |
| 4 | | drinking water | at 10 | Whittaker disputes that DDW has |
| 5 | | supply permit | (DDW's | required, or will require Plaintiff to treat |
| 6 | | with DDW for | revised 97- | VOCS below the MCL at Well V-201 as |
| 7 | | V-201 under the | 005 Policy | a condition of its permit. In a recent |
| 8 | | 97-005 process, | Guidance); | October 2020 internal SCVWA email, |
| 9 | | which requires | Gee Decl. | Dirk Marks the Director of Water |
| 10 | | SCV Water to | Ex. J, at | Resources for SCVWA, admitted that |
| 11 | | address all | 17:2-23, | regulators have "declined to directly |
| 12 | | contaminants | 33:11- | order [SCVWA] to treat for VOC." |
| 13 | | that exceed the | 34:16 | Trowbridge Decl. II, ¶ 40, Exh. AI, |
| 14 | | contaminant | (O'Keefe | 10/15/20 V-201 Corres. The DDW |
| 15 | | detection level | Depo.) | requirements under DDW Policy 97-005 |
| 16 | | ("DLR"). | 1 / | are not based on DDW's determination |
| 17 | | | | that SCVWA's well water is unsafe to |
| 18 | | | | drink. According to Mr. O'Keefe, the |
| 19 | | | | 97-005 Policy is not a health based |
| 20 | | | | standard, but one based on treatability. |
| 21 | | | | Trowbridge Decl., ¶ 29, Ex. AA, |
| 22 | | | | O'Keefe Depo. at 10:11-18, 84:8-85:6. |
| 23 | | | | The 97-005 Policy uses an equation |
| 24 | | | | called the MCL Equivalent to determine |
| 25 | | | | if additional treatment is necessary |
| 26 | | | | before the water can be distributed to |
| 27 | | | | households. Trowbridge Decl., ¶ 31, |
| 28 | | <u> </u> | 1 | |

| 1 | Ex. AC, Process Memo, pp. 13-16; Mr. |
|----|---|
| 2 | O'Keefe testified that the equation "is |
| 3 | not intended to be a risk assessment at |
| 4 | all It's a treatability assessment." |
| 5 | Trowbridge Decl., ¶ 29, Ex. AA, |
| 6 | O'Keefe Depo. at 89:9-20. This sworn |
| 7 | testimony is consistent with the |
| 8 | September 2020 DDW Process Memo |
| 9 | 97-005 Users Guide ("DDW Users |
| 10 | Guide"). Trowbridge Decl. II, ¶ 61, |
| 11 | Ex. BD. |
| 12 | |
| 13 | In determining whether the MCL |
| 14 | Equivalent is below 1, DDW does not |
| 15 | require any health risk assessment. |
| 16 | Trowbridge Decl., ¶ 29, Ex. AA, |
| 17 | O'Keefe Depo, at 89:9-20. SCVWA |
| 18 | has completed the work necessary to |
| 19 | determine the MCL Equivalent for V- |
| 20 | 201. They have concluded that the |
| 21 | MCL Equivalent score for V-201 is |
| 22 | below 1. Trowbridge Decl., ¶ 6, Ex. D |
| 23 | February 97-005 Report at Executive |
| 24 | Summary – VI. |
| 25 | |
| 26 | According to the DDW Users Guide, |
| 27 | and SCVWA's interpretation of its |
| 28 | |

| 1 | | | | obligations, no additional treatment for |
|----|---------|--------------------|-------------|--|
| 2 | | | | VOCs is necessary if the score is below |
| 3 | | | | 1. SCVWA's consultants have |
| 4 | | | | submitted many reports to DDW in |
| 5 | | | | which they determined the MCL |
| 6 | | | | Equivalent. In each case the number has |
| 7 | | | | been below 1. Trowbridge Decl., ¶ 6, |
| 8 | | | | Ex. D February 97-005 Report at at 7-1, |
| 9 | | | | 7-3. According to their consultant |
| 10 | | | | Meredith Durant, "less than 1 is [a] |
| 11 | | | | green light" Trowbridge Decl., ¶ |
| 12 | | | | 27, Ex. Y, Durant Depo at 32:15. |
| 13 | | | | |
| 14 | | | | D' 1 WIL'4 1 1' 1 1 DDW |
| 15 | 90. | Treatment | Abercrom | Disputed. Whittaker disputes that DDW |
| 16 | | through either | bie Decl. ¶ | has required, or will require Plaintiff to |
| 17 | | removing the | 7; Gee | treat VOCS below the MCL at Well V- |
| 18 | | VOCs or | Decl. Ex. | 201 as a condition of its permit. In a |
| 19 | | blending with | J, at | recent October 2020 internal SCVWA |
| 20 | | imported water | 74:23- | email, Dirk Marks the Director of |
| 21 | | will be required | 75:2 | Water Resources for SCVWA, |
| 22 | | to keep VOC | (O'Keefe | admitted that regulators have "declined |
| 23 | | contamination | Depo.) | to directly order [SCVWA] to treat |
| 24 | | below the DLR in | | for VOC." Trowbridge Decl. II, ¶ 40, |
| 25 | | SCV Water's | | Exh. AI, 10/15/20 V-201 Corres. The |
| 26 | | distribution | | DDW requirements under DDW Policy |
| 27 | | system in order to | | 97-005 are not based on DDW's |
| 28 | | | | determination that SCVWA's well water |
| | 2930843 | | | |

| 1 | use this | water | is unsafe to drink. According to Mr. |
|----|----------|--------|---|
| 2 | pursuan | t to a | O'Keefe, the 97-005 Policy is not a |
| 3 | DDW p | ermit. | health based standard, but one based on |
| 4 | | | treatability. Trowbridge Decl., ¶ 29, |
| 5 | | | Ex. AA, O'Keefe Depo. at 10:11-18, |
| 6 | | | 84:8-85:6. The 97-005 Policy uses an |
| 7 | | | equation called the MCL Equivalent to |
| 8 | | | determine if additional treatment is |
| 9 | | | necessary before the water can be |
| 10 | | | distributed to households. Trowbridge |
| 11 | | | Decl., ¶ 31, Ex. AC, Process Memo, pp. |
| 12 | | | 13-16; Mr. O'Keefe testified that the |
| 13 | | | equation "is not intended to be a risk |
| 14 | | | assessment at all It's a treatability |
| 15 | | | assessment." Trowbridge Decl., ¶ 29, |
| 16 | | | Ex. AA, O'Keefe Depo. at 89:9-20. |
| 17 | | | This sworn testimony is consistent with |
| 18 | | | the September 2020 DDW Process |
| 19 | | | Memo 97-005 Users Guide ("DDW |
| 20 | | | Users Guide"). Trowbridge Decl. II, ¶ |
| 21 | | | 61, Ex. BD. |
| 22 | | | |
| 23 | | | In determining whether the MCL |
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| 25 | | | require any health risk assessment. |
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| 27 | | | O'Keefe Depo, at 89:9-20. SCVWA |
| 28 | | I | 1 |

| 1 | has completed the work necessary to |
|----|--|
| 2 | determine the MCL Equivalent for V- |
| 3 | 201. They have concluded that the |
| 4 | MCL Equivalent score for V-201 is |
| 5 | below 1. Trowbridge Decl., ¶ 6, Ex. D |
| 6 | February 97-005 Report at Executive |
| 7 | Summary – VI. |
| 8 | |
| 9 | According to the DDW Users Guide, |
| 10 | and SCVWA's interpretation of its |
| 11 | obligations, no additional treatment for |
| 12 | VOCs is necessary if the score is below |
| 13 | 1. SCVWA's consultants have |
| 14 | submitted many reports to DDW in |
| 15 | which they determined the MCL |
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| 17 | been below 1. Trowbridge Decl., ¶ 6, |
| 18 | Ex. D February 97-005 Report at at 7-1, |
| 19 | 7-3. According to their consultant |
| 20 | Meredith Durant, "less than 1 is [a] |
| 21 | green light " Trowbridge Decl., ¶ |
| 22 | 27, Ex. Y, Durant Depo at 32:15. |
| 23 | |
| 24 | To this day, and about 10% of the time, |
| 25 | SCVWA serves customers water with |
| 26 | VOCs above the DLR but below the |
| 27 | MCL. |
| 28 | |

| | | | SCVWA considers contamination below |
|-----|------------------|--|---|
| | | | the MCLs to be safe to drink and admits |
| | | | that up to 10% of the water delivered to |
| | | | households contains detectable levels of |
| | | | VOCs. Trowbridge Decl., ¶ 23, Ex. U, |
| | | | Abercrombie MSJ Decl. at ¶¶ 8-9; ¶ 7, |
| | | | Ex. E, Alvord 12/12/19 30(b)(6) Depo. |
| | | | at 19:12-23; ¶ 24, Ex. V, Deposition of |
| | | | Michael Alvord (December 5, |
| | | | 2019)("Alvord Depo.") 30:15-31:14. |
| | | | |
| | | | |
| 91. | SCV Water | Abercrombie | Disputed. In fact, SCVWA |
| | incurred | Decl. Ex. C, | actually informed their customers |
| | replacement | at ¶¶ 7-10, | the opposite, "The closing of this |
| | water response | 16-10. | well will not impact the Santa |
| | costs because it | | Clarita Valley Family of Water |
| | cannot use V-201 | | Suppliers' ability to adequately |
| | water for | | provide water to our customers |
| | drinking water | | and will not have a negative |
| | supply and | | impact on the Valley's water |
| | cannot operate | | supply." (emphasis added). Gee |
| | well V-205 due | | Decl. Ex. Z. |
| | to perchlorate | | |
| | and VOC | | SCVWA has provided no evidence to |
| | contamination | | suggest it was required to purchase |
| | | | 1 00 1 |
| | 91. | incurred replacement water response costs because it cannot use V-201 water for drinking water supply and cannot operate well V-205 due to perchlorate and VOC | incurred replacement at ¶¶ 7-10, at ¶¶ 7-10, 16-10. costs because it cannot use V-201 water for drinking water supply and cannot operate well V-205 due to perchlorate and VOC |

| 1 | from the | water from the State Water Project on an |
|----|-----------------|---|
| 2 | Whittaker Site. | emergency basis. SCVWA's Urban |
| 3 | | Water Management Plan prescribes |
| 4 | | specific uses of water and breakdowns |
| 5 | | between the pumped water, and |
| 6 | | purchased water, both in order to ensure |
| 7 | | the groundwater sources remain |
| 8 | | sustainable by preventing over pumping. |
| 9 | | Plaintiff has consistently pumped, and |
| 10 | | reported to its customers, that the |
| 11 | | pumping capacity in the Saugus |
| 12 | | Formation is well within the normal |
| 13 | | prescribed pumping range. In its 2014- |
| 14 | | 2019 annual reports, despite V-201 and |
| 15 | | V-205 wells being out of service in |
| 16 | | various years, SCVWA reported to its |
| 17 | | customers it maintained sufficient |
| 18 | | pumping capacity in the Saugus |
| 19 | | formation to meet the planned normal |
| 20 | | range ⁵ of pumping as described in the |
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| 22 | | also reported that in dry years, it could |
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| 25 | | maximum of three years in order to |
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| 1 | maintain the sustainability of the |
|----|---|
| 2 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
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| 8 | 2017 Santa Clarita Valley Water |
| 9 | Report, at ES-5; Ex. AY 2018 Santa |
| 10 | Clarita Valley Water Report, at ES-5, |
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| 12 | Report, at ES-2. Each and every year of |
| 13 | the available reports on SCVWA's |
| 14 | website state that Saugus Formation |
| 15 | pumping has been over the average |
| 16 | amount pumped from the Saugus |
| 17 | Formation since 1980. <i>Id.</i> It also stated |
| 18 | that it had vast reserves of "banked" |
| 19 | water available to provide to its |
| 20 | customers in the event of a dry year or |
| 21 | an emergency. <i>Id.</i> at Tables 4-1. |
| 22 | |
| 23 | SCVWA repeatedly reported to its |
| 24 | customers that pumping from the |
| 25 | Saugus formation was within the normal |
| 26 | range as projected by its Urban Water |
| 27 | Management Plans, and that if it were |
| 28 | |

| 1 | necessary, SCVWA could pump more |
|----|---|
| 2 | than 3 times that production from the |
| 3 | Saugus formation alone to account for |
| 4 | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 5 | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 6 | Valley Water Report, at Tables 3-1. |
| 7 | SCVWA offers no explanation as to |
| 8 | why they would not use one of the other |
| 9 | 10 wells located in the Saugus |
| 10 | Formation to pump additional |
| 11 | groundwater. |
| 12 | |
| 13 | This also likely depends on yearly |
| 14 | demand, for example in 2014, compared |
| 15 | to 2013, total water use in the Santa |
| 16 | Clarita Valley in 2014 was almost ten |
| 17 | percent lower, and it was below the |
| 18 | short-term projected water requirement |
| 19 | estimated in last year's Annual Water |
| 20 | Report. The decrease in demand was |
| 21 | more than 10x the purported lost |
| 22 | capacity, suggesting SCVWA would not |
| 23 | have to make any accommodation to |
| 24 | account for the lost production from V- |
| 25 | 205. Trowbridge Decl. II, ¶¶ 52, Ex. |
| 26 | AU, 2014 Santa Clarita Valley Water |
| 27 | Report, at p. 7. |
| 28 | |

| 92. | June 30, 2020, | Abercrombie | Disputed. |
|---------|-------------------|---|---|
| | SCV Water has | Decl. ¶ 8. | In fact, SCVWA actually informed |
| | expended | | their customers the opposite, "The |
| | \$3,858,974 for | | closing of this well will not |
| | replacement water | | impact the Santa Clarita Valley |
| | for Saugus | | Family of Water Suppliers' |
| | | | ability to adequately provide |
| | V-201 and V-205. | | water to our customers and will |
| | | | not have a negative impact on |
| | | | the Valley's water supply." |
| | | | (emphasis added). Gee Decl. Ex. |
| | | | Z. |
| | | | |
| | | | SCVWA has provided no evidence to |
| | | | suggest it was required to purchase |
| | | | water from the State Water Project on an |
| | | | emergency basis. SCVWA's Urban |
| | | | Water Management Plan prescribes |
| | | | specific uses of water and breakdowns |
| | | | between the pumped water, and |
| | | | purchased water, both in order to ensure |
| | | | the groundwater sources remain |
| | | | sustainable by preventing over pumping. |
| | | | Plaintiff has consistently pumped, and |
| | | | reported to its customers, that the |
| | | | pumping capacity in the Saugus |
| 0000000 | | | |
| | 92. | SCV Water has expended \$3,858,974 for replacement water for Saugus Formation Wells | SCV Water has expended \$3,858,974 for replacement water for Saugus Formation Wells |

| 1 | Formation is well within the normal |
|----|---|
| 2 | prescribed pumping range. In its 2014- |
| 3 | 2019 annual reports, despite V-201 and |
| 4 | V-205 wells being out of service in |
| 5 | various years, SCVWA reported to its |
| 6 | customers it maintained sufficient |
| 7 | pumping capacity in the Saugus |
| 8 | formation to meet the planned normal |
| 9 | range ⁶ of pumping as described in the |
| 10 | 2010 Urban Water Management Plan. It |
| 11 | also reported that in dry years, it could |
| 12 | pump up to three times that amount |
| 13 | from the Saugus Formation for a |
| 14 | maximum of three years in order to |
| 15 | maintain the sustainability of the |
| 16 | aquifer. Trowbridge Decl. II, ¶¶ 52-57, |
| 17 | Ex. AU, 2014 Santa Clarita Valley |
| 18 | Water Report, at ES6, Ex AV, 2015 |
| 19 | Santa Clarita Valley Water Report, at |
| 20 | ES-6; Ex. AW 2016 Santa Clarita |
| 21 | Valley Water Report, at ES-5; Ex. AX |
| 22 | 2017 Santa Clarita Valley Water |
| 23 | Report, at ES-5; Ex. AY 2018 Santa |
| 24 | Clarita Valley Water Report, at ES-5, |
| 25 | Ex. AZ 2019 Santa Clarita Valley Water |
| 26 | <u> </u> |

⁶ To comply with its Urban Water Management Plans and to ensure the Saugus Aquifer remains sustainable, as groundwater elevations are generally decreasing.

| 1 | Report, at ES-2. Each and every year of |
|----|---|
| 2 | the available reports on SCVWA's |
| 3 | website state that Saugus Formation |
| 4 | pumping has been over the average |
| 5 | amount pumped from the Saugus |
| 6 | Formation since 1980. <i>Id.</i> It also stated |
| 7 | that it had vast reserves of "banked" |
| 8 | water available to provide to its |
| 9 | customers in the event of a dry year or |
| 10 | an emergency. <i>Id.</i> at Tables 4-1. |
| 11 | |
| 12 | SCVWA repeatedly reported to its |
| 13 | customers that pumping from the |
| 14 | Saugus formation was within the normal |
| 15 | range as projected by its Urban Water |
| 16 | Management Plans, and that if it were |
| 17 | necessary, SCVWA could pump more |
| 18 | than 3 times that production from the |
| 19 | Saugus formation alone to account for |
| 20 | dry years. Trowbridge Decl. II, ¶¶ 52- |
| 21 | 57, Ex. AU-AZ, 2014 Santa Clarita |
| 22 | Valley Water Report, at Tables 3-1. |
| 23 | SCVWA offers no explanation as to |
| 24 | why they would not use one of the other |
| 25 | 10 wells located in the Saugus |
| 26 | Formation to pump additional |
| 27 | groundwater. |
| 28 | |

| 1 | | | | |
|----|---------|------------------|---------------|-------------------------------------|
| 2 | | | | This also likely depends on yearly |
| 3 | | | | demand, for example in 2014, |
| 4 | | | | compared to 2013, total water use |
| 5 | | | | in the Santa Clarita Valley in 2014 |
| 6 | | | | was almost ten percent lower, and |
| 7 | | | | it was below the short-term |
| 8 | | | | projected water requirement |
| 9 | | | | estimated in last year's Annual |
| 10 | | | | Water Report. The decrease in |
| 11 | | | | demand was more than 10x the |
| 12 | | | | purported lost capacity, suggesting |
| 13 | | | | SCVWA would not have to make |
| 14 | | | | any accommodation to account for |
| 15 | | | | the lost production from V-205. |
| 16 | | | | Trowbridge Decl. II, ¶¶ 52, Ex. |
| 17 | | | | AU, 2014 Santa Clarita Valley |
| 18 | | | | Water Report, at p. 7. |
| 19 | 93. | SCV Water's | Abercrombie | Not disputed. |
| 20 | | blend water and | Decl. ¶¶ 8-9. | 1 |
| 21 | | replacement | " " | |
| 22 | | water costs will | | |
| 23 | | continue to | | |
| 24 | | accrue until | | |
| 25 | | DDW issues a | | |
| 26 | | water supply | | |
| 27 | | permit for V-201 | | |
| 28 | 2930843 | <u> </u> | <u> </u> | <u> </u> |

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| 1 | | well. | | |
|----|-----|-------------------|----------------|---------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 0.4 | | | 2.2 |
| 9 | 94. | Whittaker owned | RJN, Ex. A, at | Not disputed. |
| 10 | | the Site from | 1058 | |
| 11 | | 1967 to | (Castaic | |
| 12 | | January 1999. | Lake). | |
| 13 | | | | |
| 14 | | | | |
| 15 | | | | |
| 16 | 95. | Whittaker | RJN, Ex. A, at | Not disputed. |
| 17 | | operated the Site | 1058 | |
| 18 | | from 1967 | (Castaic | |
| 19 | | to 1987. | Lake). | |
| 20 | | 101707. | Luke j. | |
| 21 | | | | |
| 22 | | | | |
| 23 | | | | |

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| 96. | Prior to 1967, the Site was owned by the Bermite Powder Company between 1943 and 1967; Whittaker purchased the stock of the Bermite Company in 1967. | Gee Decl. Ex. U, at Table 2-1 (1997 Acton Mickelson Remedial Investigation). | Not disputed. |
|-----|--|--|---|
| 97. | Soil, groundwater, and surface water were impacted as a result of Whittaker's manufacturing activities at the Site. | Gee Decl. Ex. C, at 12 (Hokkanen Report); Gee Decl. Ex. F, at 6 (Trudell Report); Gee Decl. Ex. O, at 76:16-77:15 (Hokkanen Depo.); Gee Decl. Ex. T, | Not disputed that soil groundwater were somehow "impacted" as a result of Whittaker's manufacturing activities at the site. |

| 1 | | (1987 Wenck |
|----|----------------------------|--|
| 2 | | Revised |
| 3 | | RCRA |
| 4 | | Closing |
| 5 | | Dlan), Stania |
| 6 | | Plan); Stanin |
| 7 | | Decl. ¶11; |
| 8 | | Stanin Decl. |
| 9 | | Ex. A, at 1, |
| 10 | | 3, 15-18 |
| 11 | | (Stanin |
| 12 | | Report). |
| 13 | Dlaintiff has Eailed to Co | yum, ita Dundan ta Damanatuata Whittakan'a |

Plaintiff has Failed to Carry its Burden to Demonstrate Whittaker's affirmative defenses were not factually supported, and that it has been prejudiced by the inclusion of the Same. Whittaker has sufficiently plead and supported its affirmative defenses.

| 98. | Whittaker's | Gee Decl. Ex. | Not disputed. |
|-----|----------------|---------------|---------------|
| | Amended Answer | S, at 13:1- | 1 |
| | includes 51 | 21:24 (Def.'s | |
| | Affirmative | Amended | |
| | Defenses. | Answer, ECF | |
| | | 116). | |
| | | | |

| | The Affirmative Defenses in Whittaker's Amended Answer are verbatim exactly the same as those in its original | Gee Decl. Ex. S, at 13:1- 21:24 (Def.'s Amended Answer, ECF 116); Gee | Not disputed. |
|------|--|--|---|
| | answer filed on April 1, 2019. | Decl. Ex. R, at 12:16- 20:27 (Def.'s Answer to Plaintiff's | |
| 100. | SCV Water sought written discovery of all facts and persons with knowledge of facts supporting Whittaker's affirmative defenses in its Interrogatory No. | Compl.). Gee Decl. Ex. Q, at 4:3-6 (Plt.'s Interrog. No. 21). | Not material, nor does it show the absence of allegations. This interrogatory was improperly served in violation of maximum number of interrogatories, and was properly objected to. Whittaker and Plaintiff met and conferred and agreed to additional interrogatories, SCVWA opted not to serve this previously improperly served interrogatory. |

| 1 | | | | |
|----|------|-------------------|---------------|-------------------------------------|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | 101 | W/L:44-12- | Car Darl En | N7-4 |
| 9 | 101. | Whittaker's | Gee Decl. Ex. | Not material, nor does it show the |
| 10 | | responses to | Q, at 4:3- | absence of allegations. Plaintiff |
| 11 | | Interrogatory | 5:3 (Def.'s | has not established a lack of |
| 12 | | No. 21 state that | Resp. to | evidence as to Whittaker's |
| 13 | | SIC is | Interrog. No. | affirmative defenses. |
| 14 | | responsible for | 21). | |
| 15 | | VOCs and | , | This interrogatory was improperly |
| 16 | | perchlorate | | served in violation of maximum |
| 17 | | contamination in | | number of interrogatories, and was |
| 18 | | SCV Water's | | properly objected to. Plainly, as |
| 19 | | wells, that SCV | | Whittaker had 51 defenses, this |
| 20 | | Water is | | request alone (in addition |
| 21 | | | | constitutes 51 separate |
| 22 | | responsible for | | interrogatories) Whittaker and |
| 23 | | the contamination | | Plaintiff met and conferred and |
| 24 | | in its | | agreed to additional |
| 25 | | wells due to | | interrogatories, SCVWA opted not |
| 26 | | deficient | | to serve this previously improperly |
| 27 | | construction | | served interrogatory. |
| 28 | | | | |

| 1 | and/or | | Whittaker provided extensive |
|----|----------|------|-------------------------------------|
| 2 | maintena | nce. | notice of its allegations against |
| 3 | | | Plaintiff, and has subsequently |
| 4 | | | produced hundreds of thousands of |
| 5 | | | pages in support of its Claims. |
| 6 | | | Whittaker adequately pleaded and |
| 7 | | | has provided extensive supporting |
| 8 | | | facts in response to various |
| 9 | | | discovery requests propounded by |
| 10 | | | Plaintiff. Trowbridge Decl. II, ¶ |
| 11 | | | 64-71, Ex. BE, Whittaker's |
| 12 | | | Supplemental Interrogatory |
| 13 | | | Responses to Plaintiff's |
| 14 | | | Interrogatories Set One; Ex. BF, |
| 15 | | | Findings of Fact and Law, Central |
| 16 | | | District, Case No. 2:09-cv-01734- |
| 17 | | | GHK-RZ, Docket No. 180, June |
| 18 | | | 30, 2010; Plaintiff's Consultant, |
| 19 | | | Mr. Slade, involved with the siting |
| 20 | | | and construction of Plaintiff's |
| 21 | | | Saugus 1 and 2, V-201 and V-205 |
| 22 | | | suggested SCVWA perform |
| 23 | | | additional investigations prior to |
| 24 | | | siting wells in the Saugus |
| 25 | | | Formation, which, as a 30(b)6 |
| 26 | | | witness, he testified he had no |
| 27 | | | knowledge that SCVWA had |
| 28 | 2930843 | | |
| | | | |

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| 1 | | | | performed. Trowbridge Decl. II, |
|----|---------|-------------------|---------------|-------------------------------------|
| 2 | | | | Ex. BG at p. 64:11-68:17, 85:12- |
| 3 | | | | 85:24; 87:9-89:11; and 91:8-22. |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | Whittaker also refers to its Motion |
| 7 | | | | and MPA in support of its |
| 8 | | | | Affirmative Motion (Docket No. |
| 9 | | | | 253), at pp. 28:16-30:5; 32:1-33:8; |
| 10 | | | | and the factual allegations in its |
| 11 | | | | answer and counter claim, which |
| 12 | | | | Plaintiff ignored. Whittaker's |
| 13 | | | | Second Amended Answer and |
| 14 | | | | Counter Claim, Docket No. 116, |
| 15 | | | | January 13, 2020, pp. 22:1-27:26. |
| 16 | | | | |
| 17 | | | | |
| 18 | | | | |
| 19 | 102. | Whittaker did not | Gee Decl. Ex. | Not material, nor does it show the |
| 20 | | supplement or | A (Aug. 5, | absence of allegations. |
| 21 | | amend | 2020 Email | This interrogatory was improperly |
| 22 | | its responses to | Corresp.). | served in violation of maximum |
| 23 | | Interrogatories, | | number of interrogatories, and was |
| 24 | | Set 2. | | properly objected to. Whittaker |
| 25 | | | | and Plaintiff met and conferred and |
| 26 | | | | agreed to additional |
| 27 | | | | interrogatories, SCVWA opted not |
| 28 | | | | to serve this previously improperly |
| 20 | 2930843 | | l | <u> </u> |

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| | | | served interrogatory. | | | |
|--------------------|---------------------|----------------|---|--|--|--|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 103. | Whittaker's | Gee Decl. ¶ 4. | Not disputed. SCVWA did not take Whittaker up on its offer, and | | | |
| | counsel agreed to | | | | | |
| | withdraw | | instead wasted the Court's time | | | |
| | Affirmative | | with this motion. | | | |
| | Defense No. 41 | | | | | |
| | (Business | | | | | |
| | Judgment Rule). | | | | | |
| 104. | Whittaker's | Gee Decl. ¶ 4. | Not disputed. SCVWA did not take Whittaker up on its offer, SCVWA did not take Whittaker up | | | |
| | counsel agreed to | | | | | |
| | withdraw | | | | | |
| | its statute of | | on its offer, and instead wasted the | | | |
| | limitations defense | | Court's time with this motion | | | |
| | if SCV | | | | | |
| | Water would | | | | | |
| | confirm in writing | | | | | |
| | that its | | | | | |
| | nuisance and | | | | | |
| | trespass claims are | | | | | |
| | continuing. | | | | | |
| Conclusions of Law | | | | | | |

Conclusions of Law

Plaintiff has failed to carry its burden to demonstrate it is entitled to relief 1 2 under CERCLA as it has plainly failed to establish that its response actions 3 constituted removal actions, much less time-critical removal actions. Plaintiff has 4 faield to carry its burden to demonstrate that the VOCs below MCLs in its 5 production wells pose an environmental or health risk, as it has and continues to 6 serve such water to its customers for nearly a decade. Plaintiff has failed to carry 7 its burden to establish that Whittaker's affirmative defenses are insufficiently plead 8 or supported, and has not established and cannot establish that it suffers any 9 prejudice as a result of their inclusion in Whittaker's pleading. Plaintiff further has failed to establish it is entitled to relief as it has failed to establish it has properly 10 11 documented NCP Compliant Costs. 12 13 BASSI, EDLIN, HUIE & BLUM LLP Dated: December 14, 2020 14 15 By:___ /s/Michael E. Gallagher MICHAEL E. GALLAGHER 16 Attorneys for Defendant and Third-Party Plaintiff 17 WHITTAKER CORPORATION 18 19 20 21 22

28

2930843

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26

WHITTAKER'S STATEMENT OF GENUINE DISPUTES IN SUPPORT OF ITS OPP. TO PLAINTIFF'S MSJ